Supreme Court, U.S.
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No.
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In the Supreme Court of the United States

LINWOOD E. MOORING,

Petitioner,

V.

EAST CAROLINA UNIVERSITY, et al

Respondent

On Petition for Writ of Certiorari To The Fourth Circuit Court Of Appeals

PETTION FOR A WRIT OF CERTIORARI

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52 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a complaint be dismissed when a citizen (a member of a protected class) has clearly alleged violations of 14 Amendment "equal protection rights" and it is obvious that he can prove the allegations that would entitle him relief?

2. Do officials of a state university have immunity when a citizen (a member of a protected class) has clearly alleged that they have violated his 14 Amendment rights?

3. Is a citizen (a member of a protected class) barred by the Eleventh Amendment from suing his own state under Title 42 Section 1983-85 when state officials has been alleged of violating his 14 Amendment, equal protection rights?

4. Can the employees of a corporation conspire among themselves driven by personal reasons or by superceding their authority wherein I can state an actionable claim?

5. Does the Federal Court have Pendant Jurisdiction over state claims that are clearly relevant to a Federal claim, when a citizen has alleged violations of his 14 Amendment Rights?

PARTIES

The following individuals and entity are parties in the court below: East Carolina University, Robbie Hudson, Ernie Marshaburn, Joe Norris, Woody Bolton, Gloria Schwartz, Paula Hutchinson, Roger Nobles, Arthur G. Howell, Jr.

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REVIEW IS WARRANTED BECAUSE THE QUESTIONS PRESENTED ARE OF IMPERATIVE PUBLIC IMPORTANCE, AND REVIEW BY THIS COURT IS ESSENTIAL TO BRING FINALITY TO CONFLICTS BETWEEN THE CIRCUITS, AS WELL AS, TO BRING IN SOME OF THE CIRCUITS THAT MAY HAVE STRAYED FROM SOME EARLIER RULINGS OF THIS COURT TO SUCH A DEGREE THAT TO EVEN GET A

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Aside from suits against States by the United States and by other States, there are permissible suits by individuals against States upon federal constitutional and statutory grounds and indeed upon grounds expressly covered by the Eleventh Amendment in somewhat fewer circumstances.....

CITATION TO OPINION

The Forth Circuit Courts of Appeal ordered that its opinion not be published. The style of the case was Mooring v. East Carolina University, et al, No. 02 - 1911, (December 19, 2002). The opinion is reproduced in the Appendix. The District Court's order dismissing Petitioner's case is also reproduced there.

JURUISDICTION

The judgment of the district court was entered on August 6, 2002 dismissing Petitioners case before the defendants had answered or any evidence had been recorded in the court records. A timely Notice of Appeal to the United States Court of Appeals for the Fourth Circuit was filed on August 25, 2002. The Court of Appeals affirmed the district court order dismissing Petitioner case on December 19, 2002.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1) (which provides that this Court may exercise certiorari jurisdiction " before or after rendition of judgment or decree" by a federal court of Appeals. Jurisdiction basis for the Fourth Circuit is 28 U.S.C. 1291, and for the District Court is 28 U. S. C. 1331 and 1337.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment provides that no state....."shall..... deny to any person within its jurisdiction the equal protection of the laws."

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1. Footnotes are in the format of "ftn , page number. Appendix are formatted "App." and para. (pragraph number), appendix 15-49 are in a separate book.

STATUTORY PROVISIONS

Title 42, Section 1983 states that Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42, Section 1985 states that If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws,.....

STATEMENT OF THE CASE

Petitioner, a black male and Vietnam Veteran, was hired at East Carolina University (hereinafter, ECU) in February of 1984 in the Computing and Information Center (hereinafter, "ITCS"). I have three Associate of Applied Science degrees that I had when I started: **(App. 47-49)** Computer Programming, Business Administration, and Industrial Management Technology. I did my on-job-training at ECU and was hired as a computer Operator II before finishing the course. During that time promotions were handled based on seniority, wherein the most senior operator knew when he would be promoted to work on 1 of 3 teams: computer programming team, production control team or communication team. Therefore, for

about three years after I was hired, I didn't apply for other positions, out of respect for the promotional system that was already in place, even though I was qualified to work on any of the aforementioned teams.

By the time I decided to start applying for other positions, the rules for getting promotions had changed. It was no longer based on seniority, but the directors and managers started requiring other criteria to make it harder for minorities to get the opened positions. At that time, Petitioner and a few other minority operators were some of the most educated and most senior operators. Unfortunately for us, the directors and managers in our department used every means possible to stop us from being promoted.

To make a long story short, when I did start applying for positions, my qualifications were never good enough to get me a promotion, even though I was more qualified for the open positions than most of the employees who were hired. In fact, although other operators were allowed to train in other jobs to help them prepare for promotions, I was denied that opportunity. I was denied many times the opportunity to be reclassified when North Carolina State Personnel made provisions for all operators to advance. **(App. 43)** I have applied for over 30 jobs during my stay at ECU, which does not include the numerous opportunities for reclassifications and upgrades. I was wantonly, willingly and intentionally denied advancement, in any way, for over 19 years

PROCEDURAL HISORY

A. Proceeding in the District Court.

On 16 April, 2002, Petitioner, filed a complaint against defendants ECU, sued as a person, directors, managers, and supervisors sued in their official capacities. I was forced to file this lawsuit when defendants Howell, Nobles and Bolton, who were relevant to my being held back all those years, conspired to have me terminated for no apparently reason other than the fact that Howell was trying to

make a name for himself. It appears that Howell thought that by having me fired the operators and other state employees would fear him, which would empower him to control them anyway he wanted to. Most of the other operators knew that he was trying to have me fired, and that the officials at ECU were doing nothing to stop him. Therefore, I was left with no choice but to file a lawsuit to prevent Howell from having me terminated.

On or about 24 April, 2002, I served all defendants by depositing a copy of my complaint and a summon in the U.S. Mail, postage paid. I hand-delivered all return receipts to the clerk and had them filed on 6 May, 2002. On or about 13 May, 2002, defendants requested an extension of time to respond to my complaint that was granted, giving the defendants a 4 June, 2002 deadline. On or about May 21, 2002, I received a letter from the defendant's attorney letting me know that they had filed a Motion To Dismiss my complaint pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6). The Motion was filed on or about May 22, 2002.

Petitioner received another letter from the clerk of the court on 26 May, 2002 alerting me that I had 20 days (11 June, 2002) to serve my response to Defendants' Motion to Dismiss. Since there were so many issues to be addressed I filed a motion to extend the time in which to respond to defendants Motion to Dismiss and the court ordered that I had until 25 June, 2002. On 11 June, 2002 I file a request for Leave of court to be allowed to exceed 30 pages to respond to defendants Motion to Dismiss and it was granted on June 19, 2002. I filed a timely opposition to defendants Motion to Dismiss on June 25, 2002. Defendants' attorney sent me a timely reply brief on or about July 11, 2002. On August 6, 2002 the District Court sent its Order **(App. 3-12)**, which dismissed my case on all counts without the defendants having to answer or any other information in the court records.

After my careful examination of the information sent to me letting me know the judgment of Judge Malcolm, I noticed that the information indicated that their was a hearing or a trail in which Judge Malcolm based his decision on to dismiss my case. **(App. 12B)** This I found to be puzzling, for I have not been in either a trial or a hearing since this case started. Moreover, if there was a trial or a hearing, who stood in to represent the plaintiff? How could there be a trial or hearing without me to speak on my own behalf in the proceedings? I would like to bring to the attention of this Court that I am representing myself, and it should be recorded that I have not been in a trial or hearing involving this matter. In fact I haven't talked to any attorney about this matter.

B. Proceeding in the Appellate Court

On August 9, 2002, Petitioner filed a timely Notice of Appeal and sent a copy to defendants' attorney. **(App. 13)** On or about August 22, 2002 I received information from the clerk of the Fourth Circuit with instructions as to how to format my informal brief. I was ordered to file my appeal no later than September 16, 2002. I filed a timely informal brief. On or about September 16, 2002, defendant filed a timely reply to my appeal. On December 19, 2002, I received a letter from the Fourth Circuit Appeals Court, affirming the decision of the Federal District Court for the Eastern District of North Carolina at Greenville by unpublished per curiam opinion (App. 1,2) without the defendants having to even answer and this is where the matter stands now.

REASON FOR GRANTING THIS WRIT OF CERTIORARI

Review is warranted because the questions presented are of imperative public importance, and review by this court is essential to bring finality to conflicts between the circuits, as well as, to bring in some of the circuits that may have strayed from some earlier

rulings of this court to such a degree that to even get a complaint in court is almost an impossible task.

ARGUMENT

QUESTION 1

Can a complaint be dismissed when a citizen (a member of a protected class) has clearly alleged violations of 14 Amendment "equal protection rights" and it is obvious that the citizen can prove the allegations?

The Dcourt acted prematurely when it dismissed my case because a lawsuit should not be dismissed when a citizen has alleged a claim that must be held as being true. A lawsuit should not be dismissed when it is obvious that the plaintiff can prove the allegations. My complaint was over 30 pages long, with a statement of fact that must be held as true that is about 20 pages long, that includes names and dates of alleged incidents, detailing the deprivations of rights and loss of property that I suffered, as well as, other state employees from 1992-2002. It is obvious that out of 20 pages of allegations there are many genuine issues of material facts that should have stopped a dismissal of my lawsuit. **(App. 15B)**

Furthermore, I want to bring to the attention of this Court the Standard Of Review that is accepted by most, if not all, federal circuits when considering a Motion to Dismiss that reflects my belief that my complaint should not have been dismissed. This Standard Of Review should have been the guide the Dcourt used to determine whether or not a Motion to Dismiss should be granted. **(App. 14-15)**

Also cited below is a portion of the information the Dcourt used to support its decision that was taken from the Court's Discussion in the Dcourt's Order filed August 6, 2002. Pay attention to the way the court has not followed its own Standard Of Review that clearly points out that my complaint should never have been dismissed. **(App. 5, para. 2)**

> After accepting all well pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the Plaintiff favor, motion to dismiss are granted only where the plaintiff can prove no set of facts which would entitle him to relief. (Mylan Lab. Inc. v. Matari, 7 F.3d 1130 (4th Cir. 1983)

The Dcourt use the citing above to set the standard as to how my complaint should have been handled in that all the allegations that I have alleged should have been accepted as true and all reasonable factual inferences from those facts should have been in my favor. It is obvious that the Dcourt has taken nothing that I have alleged as true and no inferences were in my favor. This is clearly ignoring the cited information the court used to support it own Order. The Dcourt should have believed that the defendants had done everything that I have alleged.

Consider the case Maxey v. Smith in the Fifth Circuit, wherein the Court of Appeals followed the guideline of the Standard of Review. The Fifth Circuit Court of Appeals handled a motion to dismiss completely different from the Forth Circuit. It clearly stated that it believed the allegations of the plaintiff. This cannot be stated when considering how the Fourth Circuit handled my case, for it is clear that the Dcourt didn't believe any of my allegations.2

Then the abovementioned citing goes on to say that a motion to dismiss is granted only where the plaintiff can prove no set of facts that would entitle him to relief. Again the Dcourt has ignored the

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2.("Factual allegations are examined to determine whether they would be sufficient, if proven, to establish a violation of clearly established law."). In its most basic terms, this court must 1) assume that the official committed the acts of which the plaintiff complains, 2) determine what relevant facts and circumstances surrounded the action, including what facts the official was aware of or should have been aware of when taking the alleged action, and 3) objectively determine as a matter of law whether a

reasonable official in the defendants' [*9] position would have believed that he was violating clearly established constitutional rights by taking such action. Only the second of these inquiries has the potential to raise genuine issues of material fact, and only the presence of such issues would allow the submission of the immunity question to the finder of fact. Brown v. Bryan County, 67 F.3d 1174, 1181 n.14 (5th Cir. 1995); Mangieri, 29 F.3d at 1017-18; Lampkin, 7 F.3d at 434-36.

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information that it has cited, in that it is clear that I can prove the facts that I have alleged. This Court only has to consider the fact that I have not been allowed to advance, in any way, in over 19 years to clearly see that the slightest inference would be in my favor that I have been deprived of my 14 Amendment equal protection rights. This can be further established when this Court consider that the state of North Carolina has made provisions to reclassify all operators numerous time since I was hired at ECU. **(App.43)** This clearly shows that there are genuine issues of material fact at issue and this case should have never been dismissed.

I would like to remind this Court that all I must alleged to state a claim under Title 42 section 1983 is that some person, acting under colors of law, deprived me of a right, a privilege or an immunity secured by the federal constitution.3

Therefore, the Dcourt and Apcourt acted prematurely when they dismissed my claims insinuating that I suffered no deprivation of right or loss in property. I have properly alleged that for years ECU's officials willingly and intentionally deprived me, as well as, other minorities of our equal protection rights. These allegations must be held as true until proven differently in a court of law. Furthermore,

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3. To state a claim for relief under § 1983, the claimant need allege only (1) that some person deprived the complainant of a right, privilege, or immunity secured by the federal constitution; and (2) that such person acted under color of state law. *Parratt v. Taylor,*

451 U.S. 527, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981); International Society for Krishna Consciousness, *Inc. v. Colorado State Fair & Industrial Exposition Commission*, 673 P.2d 368 (Colo. 1983). It is also well settled that complaints filed under the Civil Rights Act are to be construed liberally.*Krishna Consciousness*, 673 P.2d 368; *Morrison v. Jones*, 607 F.2d 1269 (9th Cir. 1979), *cert. denied*, 445 U.S. 962, 64 L. Ed. 2d 237, 100 S. Ct. 1648 (1980).

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neither the Dcourt nor the Apcourt can say, without a shadow of doubt, that I cannot prove the allegations in my lawsuit. Moreover, it has not been demonstrated that there is no genuine issue of material fact at issue in this matter.

For there is one genuine issue that cannot be disputed that clearly show a deprivation of right and loss of property, and that is that I have never been promoted, upgraded or even reclassified. To be deprived of a reclassification for over 19 years alone is enough to show that I has suffered a loss in property and has been deprived of a right that other employees were allowed to enjoy. This is something that neither defendant nor any other computer operator can say who was hired doing the time that Petitioner was hired, (that he has never been promoted, reclassified, and or upgraded for over 19 years).

This Court should set the record straight for me and other N. C. state employees whose rights will be violated if this Court doesn't act now by sending a clear message that say that my 14th Amendments rights have been violated. There are many other state employees whom I work with and those who have quit their jobs for similar reasons that I have alleged in this matter who will benefit from this Courts action. Only this Court has the power to correct this wrong, and accordingly, for this reason, this Court should grant a Writ of Certiorari.

QUESTION 2

Do the officials of a state university have immunity when a citizen (a member of a protected class) has clearly alleged that they have violated his 14 Amendment rights?

The Dcourt and the Apcourt acted prematurely when they dismissed Petitioner's case on the grounds of absolute state immunity. When I observed the reasons for the Dcourt and Apcourt to dismiss my complaint, I was a bit confused, in that it appears that ECU and its officials enjoy immunity. In fact, a type of absolute immunity. I know that the Dcourt never said that ECU has absolute immunity, but since there was no evidence in the court records, no hearing, no answer from the defendants, no summary judgment and nothing in the Dcourt's records but my complaint (that the Dcourt should have believed), I can only assume the Dcourt did not need to look at any evidence to determined that ECU was qualified for state immunity. The way I interpret this is that, ECU and its officials are absolutely immune from a Title 42 Section 1983 civil rights lawsuit, that cannot be true.

Immunity

When I did my research on immunity I found that there is really no "absolute immunity" at all. For even absolute immunity, which may be enjoyed by our presidents, governors, judges and legislators has conditions that must be met in order for any of them to enjoy it. Consider the Jones v. President Clinton lawsuit (1997), the District Court and the Eighth Circuit Court of Appeals was faced with an immunity issue that involved a sitting President. The President's lawyers tried to get Presidential immunity for him, which is understandable being that he was the sitting president at that time and his focus should have been on the concerns of the country, not a lawsuit. Although President Clinton's lawyers put up a good argument, they could not get the Court to rule in the president's favor and ultimately Presidential immunity

was denied in a summary judgment proceeding. **(App. 20)**

We can see clear reasoning for the Eighth Circuit to deny Clinton Presidential immunity in the citing Nixon v. Fitzgerald, the Court established that there is:

> "no support for immunity for unofficial conduct. Moreover, immunities for act clearly within official capacity are grounded in the nature of the function performed, not the identity of the actor who performed it".

Had state immunity been determined by the identity of the actor, as in my case, the Court could not have denied President Clinton immunity. But since immunity is grounded in the official act and not the identity of the actor and the president had been alleged of violating a citizen's rights, there was no immunity.

To establish that Clinton did not have immunity, the Court looked at the act(s) the President had been alleged to have committed and based its decision on the evidence that was admitted into the Court's records. Both the District Court and the Eighth Circuit Court of Appeals denied Clinton Presidential Immunity, **(App. 20)** showing that even the President of the United States doesn't enjoy immunity when he has been alleged to have violated the rights of a citizen and sued pursuant to Title 42, Section 1983-1985 claims.

The Court went on to explain that the President, like other officials, is subject to the same laws that apply to all citizens, that no case has been found in which an official was granted immunity from suit for his unofficial acts. The Court held that the rationale for official immunity is inappropriate where only personal, private conduct by a president is at issue. Also in **Ferri v. Ackerman, 44 U.S. 193 (1979),** the Court made it clear that the rationale for allowing certain public servants immunity from suits for money damages arising out of their official acts is

inapplicable to unofficial conduct. Petitioner has clearly alleged violations of 14 Amendment rights in this case. Consider Ferri v. Ackerman, 44 U.S. 193 (1979).

> "In cases involving prosecutors, legislators, and judges we have repeatedly explained that the immunity serves the public interest in enabling such officials to perform their designated functions effectively without fear that a particular decision may give rise to personal liability."

We have just read that the reason this Court allows people such as prosecutors, legislators, presidents, judges, etc. immunity is because it serves the public interest. This allow the officers to perform their designated function effectively without fear that a particular decision may rise to personal liability, which is not the case for ECU and its officials. It does not serve the public interest for ECU and its officials to be allowed immunity. In this case immunity is only used as a shield to hide the alleged unlawful deeds of the officials at ECU. There is no decision either of the defendants can make that can effect the public as does a judge, prosecutor, legislators or a president, and it is obvious that the defendants have nothing to fear in their decision making process.

Therefore, the Dcourt and the Apcourt acted prematurely when they dismissed my complaint purely based on the identity of the actors. For as discussed earlier, immunity is grounded in the official act of the actors not the identity of the actors and that there is no immunity for unofficial acts. To willingly and intentionally deprive me of my rights or conspire to deprive me of my rights for over 19 years is a clear violation of well-established federal and state laws and is clearly an unofficial act. I have alleged that ECU officials have deprived me of any promotions, upgrades, reclassifications, interim pay increases and training that have benefited all other operators and other state employees who were hired during the time

I was hired in 1984. **(App. 23-42, Complaint Statement of Fact)** Even the defendants themselves have enjoyed some, if not all, of the above mentioned privileges.

Now I want this Court to consider how the United States District Court for the Northern District of Mississippi, in the Fifth Circuit handled qualified immunity in the Maxey v. Smith case. The Court used a three-pronged inquiry for the determination of qualified immunity: If ECU and its officials have immunity it would be qualified and the Dcourt should have used a guide similar to this one to determine if the official qualified for immunity. **(App. 45-46)**

(1.) if the plaintiff has asserted the violation of a constitutional right at all.

(2.) If the law was clearly established at the time of the official's action;

(3.) And the objective reasonableness of the official's conduct as measured by reference to clearly established law.

It is clear that had the Dcourt or the Apcourt followed the pattern above to determine if the defendants qualified for immunity, they would not have qualified for it. Even using the pattern above, I have alleged the necessary information to establish that the defendants did not qualify for immunity. I have (1.) alleged a violation of a constitutional right, (2.) the law and statutes (title 42 section 1983-85) used in this case are clearly established laws and (3.) the defendant has no logical reason for depriving me of my right to advance for over 19 years.

Also we must not forget that the defendants have not demonstrated that there is an absence of a genuine issue of material fact on the matter. There has been no hearing, summary judgment or even an answer to my complaint to even attempt to demonstrate that there are no genuine issues of material facts at issue. **(App. 15B)**

Arm of a State

Since one of the requirements needed to qualify for state immunity is that the "person or entity" is an "Arm of the state", I am going to discuss it briefly with the intent to show that ECU and its officials is not an "arm of the state" that can qualify for state immunity. The Dcourt erred when it included ECU and it's officials as an "Arm of the State" who can qualify for immunity

The Dcourt relied heavily on the case Huang v. Board of Governors of the University of North Carolina to support its decision to dismiss my case on the ground that a state university is an "arm of a state". When I studied that case, I found nothing relevant to show that the Board of Governors of the University of North Carolina had been clearly established as an arm of the state which was the support the Dcourt used to say that ECU qualified for state immunity because it is an extension of that system. I totally disagree that ECU is an arm of the state, in any way.

Additionally, in the Huang case, Huang conceded and did not challenge the immunity defense of the state and its officials in that matter as I have. Huang conceded and did not challenge the alleged arm of the state status of the university officials. The Court of Appeals had no obligation to challenge that ruling for Huang, therefore the decision of the District Court stood and the Court of Appeals only affirmed the ruling of the lower District Court.

Here is more information from the U.S. Constitution Eleventh Amendment: Annotation (p.3) that will help us to determine what is an arm of the state. It also shows that ECU and its officials is not an arm of the state as the district court has stated:

> "With respect to governmental entities that derive their authority from the State, but are not the State, the Court closely examines state law to determine what the nature of the entity is, whether its an arm of a state or whether it is to be treated like a municipal corporation or

> other political subdivision. An arm of a State has immunity: "agencies exercising state power", have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same particle consequences as a judgment against the state itself.

ECU and its officials are not one of those agencies that "exercise state power". Moreover, even if ECU is considered an arm of the state, being alleged of violating any person rights still put the defendants in a position to have to prove that they have qualified immunity. I want to remind this Court that it is well established law that there is "no absolute immunity" and immunity can only be determined by careful examination of the court's records. There has been no hearing, no summary judgment proceedings, etc., to determine if ECU officials have immunity. In fact, the defendant has not yet answered. So where is the foundation for the defendants being alleged an arm of the state, qualifying for state immunity? In my complaint I have clearly alleged a violation of my 14th Amendment right that prevents the defendants from qualifying for any immunity. **(App. 19)**

Now the Dcourt and the Acourt has allowed the defendants to use the Eleventh amendment as a shield to hide their clearly alleged, unlawful deeds. But clearly both courts have erred, for the defendants have no hiding place in the Eleventh Amendment. Consider this citing:

> Ex parte Young, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex parte Young teaches that when a state officer act under a state law in a manner volatile of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or

representative character and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States Constitution".

The Dcourt has shown no relevant information that supports its assertion that ECU is an "arm of the state", which meets the requirements to enjoy qualified immunity as illustrated in Will v. Michigan State Police officer. The state police is an "arm of the state". It was established in that case that a state and its officials were not a "person" for the means of a Title 42 Section 1983 lawsuit. The Dcourt referred to this case many time in its brief, but it failed to state that the case was first dismissed, and later remanded to trial because the state police had qualified immunity and the Court needed evidence to determine if the officer met the requirements to enjoy that immunity. Notice that even after it was determined that the state official was not a "person" for the means of a Section 1983 lawsuit, the Court still had to determine if the officer qualify for immunity. **(App. 21-22)**

In the case mentioned above, one of the state police officers was involved in an auto accident while on duty. It was determined in summary judgment that the officer met the requirement for qualified immunity because the accident happened during the time the officer was performing a task for the state and there was no violation of federal law. In the present matter the directors, managers, and supervisors were doing a task for East Carolina University, but in doing so, they violated clearly established federal law that should have prevented them from qualifying for immunity.

Furthermore, even if ECU and it officials were considered an "arm of the state" , being an arm of the state is not a shield for state officials who have been alleged of violating clearly established federal law and the Constitution of the United States of America.

Therefore, ECU and it officials, even if they were considered an arm of the state, can't use the immunity protection of the Eleventh Amendment. The Dcourt decision to dismiss my case based on no evidence, no hearing and no answer from the defendants should be thoroughly reviewed by this Court to insure justice and a trial for me and other Americans who live under the Fourth Circuit Court of Appeals jurisdiction. Consider this citing: Rushy v Wayne Co, (476 Mich 247, 259; 462 NW2d 23 (1990)

> State law immunities and defenses, whether derived from statues, common law, or state constitution provisions, do not protect person otherwise subject to 1983 liability for violations of federal Constitutional rights

Therefore, the second reason this Court should grant a Writ of Certiorari is to clear up a few misconceptions concerning an "arm of the state" and "immunity". This Court should clear up the myth that immunity is grounded in the identity of the actors as clearly demonstrated in the present case. This Court should make it clear that, as cited earlier, immunity is grounded in the official act and that there is no immunity for unofficial conduct, regardless, as to whom the person may be. This Court should also make it clear that no immunity is absolute and immunity can only be determined by a careful examination of the courts records when a citizen has alleged that his 14th Amendment right has been violated.

Finally, because the Dcourt and Apcourt dismissed my complaint based on immunity that has never been determined this Court should grant this Writ Of Certiorari. For as clearly shown in this brief, there is no foundation for the immunity that ECU and its official have been granted in this matter.

QUESTION 3

Can a citizen (a member of a protected class) sue his own state under Title 42 Section 1983-85 when state

officials have been alleged of violating his 14 Amendment equal protection rights?

I disagree with the District Court and the Fourth Circuit Court of Appeals finding that a citizen cannot sue the state that he is a citizen of. The Dcourt relied on the citing below as a means of supporting its position that a citizen cannot sue his own state:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another state, or by citizen or subjects of any foreign state."

The only thing that we can clearly glean from the aforementioned quote is that a citizen of a state cannot sue another state, (an example, a citizen of North Carolina cannot sue the state of Virginia). The citing said nothing that clearly states that a citizen could not sue his own state, as in the present matter before this Court. Also the Dcourt admitted in its brief that it is not clear, as to whether a citizen of a state can sue his own state and denied me an inference in my favor to say that I can. This is the exact quote, "It is much less clear, however, whether a citizen may sue his own state, and such a suit does not at first glance appear foreclosed by the amendment's language." **(App. 6, para. 1)**

The Dcourt seems to say that there is some hidden language in the citing above that says that a citizen cannot sue his own state. But I do not see it as the Dcourt did and it appears that the Eighth Circuit in the Jones v. Clinton didn't see it as the Dcourt did either. Paula Jones' attorneys were allowed to sue state officials using Title 42 Section 1983 and 1985. **(App. 20)**

There is nothing in that citing that indicates to me that a citizen cannot sue his own state. In this situation the Court should declare that "Congress should make it's intention to do so unmistakably clear in the language of the statute", in other words, if a

citizen can't sue his own state, then Congress should make that fact unquestionably clear.

The Dcourt clearly has only assumed that because a citizen of a state cannot sue another state, he cannot sue his own state either. This uncertainty alone should have declared an inference in my favor, to say that a citizen can sue his own state. The Dcourt has not established that I, a citizen of North Carolina, cannot sue the state of North Carolina. Also, I would like to bring to the attention of this Court that the state of North Carolina is not listed as a defendant in my lawsuit.

The Dcourt also relied on a citing in the case Edelman v. Jordan to support its assumption, and I quote, "Nevertheless, the Supreme Court has consistently interpreted the amendment to bar suits against a state by it own citizens." I am sure that this statement may be true for there are some cases that are barred by the Eleventh Amendment, but citizens are not barred from suing his own state and its officials by the amendment when a violation of a right guaranteed by the United States Constitution has been alleged. Consider the U.S. Constitution: Eleventh Amendment Annotation: p3:

> Aside from suits against States by the United State and by other states, there are permissible suits by individuals against States upon federal constitutional and statutory grounds and indeed upon grounds expressly covered by the Eleventh Amendment in somewhat fewer circumstances.

There are numerous examples of citizens suing states and state officials. Consider again the Jones v. Clinton case, wherein Paula Jones, a citizen of Arkansas, sued a sitting president who was alleged to have made sexual advances on her. Jones attorney sued the President pursuant to Title 42, Section 1983, 1985, the very same constitutional amendment and statutes that I used in this case. **(App. 20)** At the time that Clinton was to have done the act, he was the

governor of Arkansas (an arm of the state), yet his attorneys didn't use the excuse that he could not be sued because he was a governor. Surely, as smart as President Clinton is and the lawyers who defended him, if a citizen could not sue a state and its officials under Title 42 Section 1983, Paula Jones case would have been dismissed because that fact would have come out some where in the case material.

Now the Dcourt and Apcourt have dismissed my case, denying me the opportunity to get even an answer from the defendants after I had met my obligation in this lawsuit by clearly alleging that state official at ECU had violated my 14 Amendment, equal protection right. **(App. 22-42 Complaint, Statement of fact)**

If I can remind this Court that the law and statutes in this case were the same laws and statutes that Paula Jones' attorney used in her lawsuit in the Eighth Circuit to sue our former President Clinton. The Eight Circuit Court of Appeals denied President Clinton presidential immunity and remanded the matter to trial. **(App. 20)** How is it that the same laws and statutes used in the Eighth Circuit in the Jones v. Clinton case has been denied in the Fourth Circuit in my case? I would like to also point out that the decision of the Eight Circuit to deny Clinton immunity was made in Summary Judgment where there were supporting facts from the plaintiff and defendant in the Court's Records. Neither the Fourth Circuit Court of Appeals nor District Court has anything in their records that clearly supports their decision to dismiss my case.

These are a few other cases that involved states and state officials wherein the state was sued. They supports my assertion that a state and state officials can be sued when they have been alleged of violating a citizens rights Scheuer, Administratrix v. Rhodes, Governor of Ohio, ET AL.; Jacobs v. College of William And Mary; Fitzpatrick v. Bitzer, 427 U.S. 445, 96 S.

Ct. 2666, 49 L. Ed. 2d 614 (1976). Consider this U. S. Supreme Court ruling:

> The U. S. Supreme Court ruled in 1976 that States are not shielded from money judgments by the Eleventh Amendment when suit is brought under a civil rights statute enacted by Congress pursuant to its powers under the Fourteenth Amendment, Fitzpatrick v. Bitzer (1976) 427 US 445, 49 Led 2d 614, 96 S Ct 2666.

It appears that the decision of the Fourth Circuit of Appeals in my case has made a ruling that conflict with the aforementioned U. S. Supreme Court ruling, as well as, other Federal Circuits. This Court should set the records straight for me, the Dcourt, the Apcourt and countless other citizens whose cases could be dismissed because it is believed that a citizen cannot sue his own state. Only this Court can correct this error. Therefore accordingly, this is another reason this Court should grant this petition for a Writ Of Certiorari.

QUESTION 4

Can the employees of a corporation conspire among themselves driven by personal reasons or by superceding their authority wherein I can state an actionable claim?

The Dcourt seems to imply that since ECU is somehow not considered a "person" within the meaning of a Title 42 Section 1983 claim, it is not a "person" for the means of my Section 1985 claim. Since it is clearly not established that ECU is not a "person" and I believe that it is, I must hold to my belief and defend my position that ECU is a "person" and that its employees can conspire among themselves. Additionally, I have support in other federal circuits that have held that a state university is a "person" for the means of a Title 42, Section 1983, 85 lawsuits.

The Supreme Court of Colorado has held in the case Uberio v. University of Colorado (a state institution) that a state university is a "person" for the purpose of a Title 42 Section 1983 lawsuit. **(App. 16-17)**. In the present matter, the Apcourt holds that a state university is not a "person" for the purpose of a Title 42 Section 1983 lawsuit clearly showing that there is a conflict in the circuits, as far as, is a state university a "person" for the purpose of Title 42 Section 1983 lawsuit.

Anyway, I have alleged that ECU employees have conspired against me and other state employees for personal reasons and that they willingly exceeded their authority by so doing. Although ECU is a corporation, that according to corporate law employees cannot conspire among themselves, I will establish that when there is an alleged violation of a citizen's constitutional rights the corporate shield can be penetrated wherein justice can prevail. I can show that employees of a corporation can conspire, creating an avenue wherein I can state a claim pursuant to Title 42, Section 1985.

Since the statute in question is rather long that I need in my defense of my position, I am only going to quote the relevant part of the statute to make my point. (Title 42, Section 1985(3)):

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly any person of equal protection of the law.....

It is a well established fact that it takes two or more "persons" to have a conspiracy, which according to corporate law cannot be done when only one corporation and the employees of that corporation is involved. The intracorporate doctrine says that a corporation and its agents cannot conspire with one another because acts of the agents are considered acts of the corporation itself. However, I can show that the employees of a corporation can conspire in

an unlawful way that will open an avenue wherein I can state an actionable claim pursuant to 42 U.S.C. Section 1985. Of course, I do admit that the intracorporate doctrine is true in that normally employees of one corporation cannot conspire among themselves, but like all rules there are always some exceptions.

Exceptions to the Intracorporate Conspiracy Doctrine are needed to prevent abuse of the doctrine, as it has been abused in the present matter. One of the prime reasons for exceptions to this rule is to prevent organizations like the KKK from incorporating and carrying out their unlawful deeds, then hide behind the corporation or form a corporation for the purpose of achieving a forbidden result. Consider what the Court said in the citing below:

> We do not suggest that an agent action within the scope of his authority will always avoid a conspiracy finding. Agents of the Klan certainly could not carry out acts of violence with impunity simply because they were acting under orders from the Grand Dragon. Travis v. Gary Community Mental Health Ctr., Inc., 921 F.2d 108 110 (7th Cir. 1990).

The second recognized exception to the intracorporate conspiracy doctrine is where the alleged conspirators have a personal stake in the decision or have exceeded his or her authority. This exception is relevant to this case. The Fourth Circuit has recognized this exception in Buschi v. Kirven, 775 F.2d 1240, 1252 (4th 1985),

> holding that the intracorporate doctrine is inapplicable where personal, rather than corporate, interests or where the person exceeds his or her authority drives the corporate agents.

Thus, the Court can recognize the intracorporate conspiracy doctrine and still make room for the situations where justice demands that the corporate veil essentially be "pierced", which is

necessary in the present matter before this Court. The defendants in this matter have conspired and manipulated state and federal funds to deprive me and other minorities of promotions, reclassification and upgrades for their own personal gains. In the case, Greenville Publishing Co., Inc. v. Daily Reflector, Inc. 496 F.2d 391, 399 (4th Cir. 1974) the intracoporate doctrine was recognized and adopted by the 4th Circuit. In this case the second recognized exception was used to insure justice in that case. **(App. 18).**

My immediate supervisor defendant Howell, started working for ECU a few months before I did in a position that was many pay grades lower than mine. I started out as a Computer Operator II and I am sure that I helped to train him in some way. Today, he is my supervisor and has always been one level above me holding a position that I should have been promoted to for more than 10 years, while I was denied any advancement at all. Although, Howell has held the same position for many years, he has been given generous bonuses that kept his salary going up, while mine only grew when the state gave cost of living raises. I estimate that although defendant Howell and I have work side by side for almost 20 years, he earn about $10,000.00 to 15,000.00 more a year than I do.

Yet, the Dcourt want this Court to believe that there is no conspiracy. I have clearly alleged that I have been conspired against **(App. 24-26, para. 20.2-21.6; App. 34-35, para. 29-29.7)** and that the conspiracies were for personal reasons, benefiting only the defendants, doing nothing for ECU (the corporation). Surely, this Court must agree that conspiring to deprive any citizen of any type of advancement for over 19 years, while giving themselves generous pay raises has to be an exception to the intracorporate doctrine rule. Furthermore, I have alleged that the managers, supervisors and directors were driven by personal

motives, which is an exception to the intracorporate doctrine that is recognized by the Fourth Circuit Court of Appeal. **(App. 18)**

Not only did they conspire driven by personal reasons, but also the defendants exceeded their authority by making changes in the reclassification process when the State of North Carolina had made provisions for all operators to be reclassified. **(App. 43)** There have been many reclassifications in my department over the years affecting many operators, but of all the reclassifications that have taken place, I have not been reclassified once. It appears that defendants Bolton, Nobles and Howell made sure that the provisions the state had provided for me was given to themselves or other operators. The Defendants have clearly exceeded their authority.

Now, I would like to remind this Court that all I must allege to survive a Motion to Dismiss, as far as, a conspiracy is concerned is that there was a mutual meeting of the minds or that the defendants reached an understanding. **4**

It is clear that there is a great need for this Court to demonstrate its power and authority in this matter. For it is obvious that, as in this case, many other citizens are being denied even a trial by the abuse of the intracorporate doctrine, which was designed to fairly handle the conspiracy elements in a lawsuit. My case alone has demonstrated clearly that this doctrine is being abused and that it is time for this Court to clear up this problem, accordingly, this Court should grant a Writ Of Certiorari in this case.

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4. To prove the existence of a civil rights conspiracy, a plaintiff need only show that the defendants had a meeting of the minds or reached an understanding. Mershon v. Beasley, 994, 451 (8th Cir. 1993) (to survive a motion to dismiss, a plaintiff must allege only that there was a mutual understanding or a meeting of the minds between the defendants). Moreover, a plaintiff need not prove that every conspirator knew the exact details of the plan, and the question of whether a conspiracy existed should not be taken from the jury where the jury can infer from the circumstances that the defendants had a meeting of the minds or reached

an understanding. Hampton V. Hanrahan, 800 F.2d 600, 620-232 (7th Cir. 1979), cert. denied, 446 U.S. 754 (1980).

QUESTION 5

Does the Federal Court have Pendant Jurisdiction over state claims that are clearly relevant to a Federal claim, when a citizen has alleged violation of his 14 Amendment Rights?

The Dcourt stated that my state claims "Intentional Inflictions of emotional distress" and "Defamation" are barred by the Eleventh Amendment and again I disagree. Since it has been clearly established earlier in this petition that the Eleventh Amendment does not shield states and state officials from suit when they have been alleged of violating the rights of any citizen, I would like to remind this Court that all that need to be considered is whether the state claims are related to the Federal claims for the Federal court to have jurisdiction.

The state claims alleged in my complaint are directly related to my Federal Claims and are a direct result of my Federal claims. **(App. 36-42, para 30-33.1)** Therefore, the Federal Court can take pendant jurisdiction over my state claims. **(App. 17B)** To really get a clear reason for me to take such extreme steps to fight this lawsuit to this Court, please read the entire text of my statement of fact.

This Court should grant a Writ Of Certiorari to clearly establish that when a state claim is relevant to a Federal claim, the Federal Court can assume pendant jurisdiction over that state claim. Therefore, for the reasons set forth above and the fact that this is a last resort for me and countless thousands of other people to get at least a trial, Petitioner Linwood E. Mooring respectfully prays that this Court grants a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

CONCLUSION

I have used every opportunity possible to point out to this Court that although I am the only petitioner, I am not the only person that needs this Court to act. There are many other N. C. state employees young and old, male and female, black and white and many nationalities who will benefit from this Court's action to grant this Writ Of Certiorari in this matter.

Additionally, it appears that, although ECU has gathered ample evidence through its own internal audits that clearly establish that for years many of the same defendants were committing violations of federal law are being protected by the university. Some of these men have been given other jobs who will probably continue to carry out there unlawful deeds, while maintaining there more than generous salaries. Unfortunately, even though many of the named defendants should have been clearly proven to have violated federal law pursuant to Title VII, other state laws and ECU own internal policies in internal audits, it doesn't appear that ECU is doing anything to set a precedent to say that violations of any state or federal laws will be tolerated at this university.

What makes matters worst, the defendants know from previous experiences in a lawsuit pursuant to Title VII, that the North Carolina State Attorney Generals office will defend them, and more than likely, never even investigate the alleged federal violations to take corrective action to insure that well established law is not further abused. The defendants know that a case like this stand little chance of surviving the Fourth Circuit Court Jurisdiction. They know that the university will look out for them as they did when I sent complaints to EEOC pursuant Title VII and the highly controversial case Hammiel v. ECU (1997). The Hammiel case involved three other minorities in my

department alleging discrimination and other state claims.

All of the named defendants knew or should have known that they were violating clearly established laws because there were numerous times they were confronted with issues involving discrimination, forcing ECU to have to clean up their mess. **(App. 44)** Unfortunately, as soon as the situations were over the defendants were back to business as usual, completely ignoring the law of this great nation. Accordingly, it does not seem that ECU is doing enough to stop its officials from violating clearly established law. This lack of corrective action can only breed more corruption and continued ignoring of federal law.

I do not mean to be petty, but I need for this Court to understand the seriousness of the circumstances I and other ECU employees are facing. This case is much bigger than Linwood Mooring. It has the potential to touch the lives of American all over the Fourth Circuit jurisdiction, as well as, other Federal circuits. To show clear examples, only a few months ago, one of my co-workers (a kind hearted, hard working, white female) was harassed to the point of quitting by some of the named defendants in this case. Shortly, thereafter another white lady quit after being harassed by many of the defendants. Just recently, on or around February 9, 2003 (while I am composing this petition), an older white lady resigned rather suspiciously.

ECU cannot continue to cover for these defendants, who by their very nature and clearly established patterns and practices will continue to violate clearly established state and federal laws. In this matter the defendant, pursuant clearly established law must answer the complaint and show that there are no genuine issues of material facts at issue before this case can be properly dismissed.

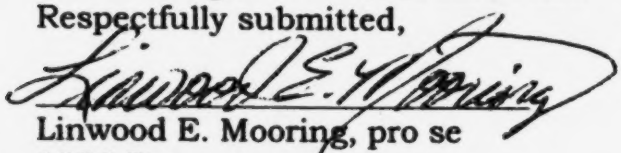
Additionally, The defendants seems to interpret the state Attorney General efforts to protect the

university as an indication that his position is to protect them, as well, and that they can continue to violate federal law. I am sure that this belief is not the position of the Attorney General Office although to the unlearned it may appear that way, since there are clearly alleged violations of a federally protected right involved in this matter. Fortunately, this Court has the power to send a loud and powerful message to all involved parties just by reviewing the judgment of the Fourth Circuit in this matter. This petition has demonstrated that it is time for this Court to act to preserve justice in this country for all American.

Moreover, I am not asking for a hand-out or for the Honorable Justices of this great Court to rule unfairly in my favor, all I am asking of this Court is to review the decision of the Appellate Court. By so doing, a clear and distinguished message will be sent throughout all Court jurisdictions that say that the United States Supreme Court is grounded in justice and that all citizens will be treated fairly, regardless as to, their race, sex, religion, etc. It will send the message that demonstrates that, regardless as to, whether the person is defending himself or has the means to hire a lawyer, every American will be treated fairly in this Court. Moreover, There are genuine issues of material facts still at issues in this matter, that should have prevented the dismissal of my case.

Therefore, for the reasons set forth above and the fact that this is a last resort for me and countless thousands of other people to get at lest a trial, Petitioner, Linwood E. Mooring respectfully prays that this Court grant a writ of certiorari.

Respectfully submitted,



Linwood E. Mooring, pro se
1306 Drum Avenue
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(252) 757 – 1568

App. 1

IN THE COURT OF APPEALS OF THE
STATE OF NORTH CAROLINA
NO. 02-1911

LINWOOD E. MOORING PLAINTIFF– APPELLANT

VERSUS

EAST CAROLINA UNIVERSITY, ROBBIE HUDSON, , JOE NORRIS, WOODY BOLTON, GLORIA SCHWARTZ, PAULA HUTCHINSON, ROGER NOBLE, AUTHUR T. HOWELL, JR.,

DEFENDANTS – APPELLEES

DATE OF JUDGEMENT:

12 / 19 / 2002

CIRCUIT JUDGES:

HON. LUTTIG, MICHEAL, AND MOTZ

COURT FROM WHICH APPEALED:

FORTH CIRCUIT COURT OF APPEALS

ATTORNEYS FOR APPELLANT:

CELIA GRASTY LATA
THOMAS OREGON LAWTON, III

ATTORNEY FOR APPELLANT:

LINWOOD E. MOORING, PRO SE

NATURE OF THE CASE:

VOLATION OF 14 AMENDMENT RIGHT

Unpublished Opinions are not binding precedent in his circuit. See Local Rule 36(c).

PER CURIAM:

Linwood E. Mooring appeals the district court's order dismissing his civil claims under 42 U.S.C. SECTIONS 1983, 1985, 1986, 1988 (2000), his criminal conspiracy claims under 18 U.S.C. SECTION 241, 242 (2000), and Racketeer Influenced and Corupt Organization Act (RICO) claims under 18 U.S.C. SECTION 1961-1962 (2000). We have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Mooring v. East Carolina Univ., CA-02-62-4H(3) (E.D.N.C. Aug. 6, 2002). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

App. 3

IN THE FEDERAL COURT OF THE
EASTERN DISTRICT COURT

NO. 4 : 02 - CV 62 – H3

LINWOOD E. MOORING
Plaintiff

v.

EAST CAROLINA UNIVERSITY, et al
Defendants

Order

Filed Aug 6, 2002

It is Ordered and adjudged defendants' motion to dismiss so granted. Plaintiff shall have and recover nothing of the defendants and the case is closed.

So ordered - s/Malcolm J. Howard, United States District Judge

s/Malcolm J. Howard
United States District Judge

App. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTEERN DISTRICT OF
NORTH CAROLINA
EASTERN DIVISION

NO. 4:02-CV-62-H(3)

LINWOOD E. MOORING)
)
Plaintiff,)
)
v.)
EAST CAROLINA UNIVERSITY)
ET AL)
DEFENDANTS)

This matter is before the court of defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6). Plaintiff has responded and defendants file a timely reply to that response. This matter is ripe for adjudication.

STATEMENT OF THE CASE

On April 16, 2002, pro se plaintiff Linwood Mooring filed this action alleging various civil rights violations arising out of his employment with East Carolina University ("ECU"). Mooring, an African-American, alleges that ECU and its officials (collectively "defendants") failed to promote him despite his relatively positive employment evaluations. Mooring further alleges that defendants burdened him with work, threatened him with termination, and promoted less qualified white applicants. Mooring asserts federal claims pursuant to 42 U.S.C. SECTION 1983, 1985, 1986, and 1988 (civil rights violations),

18 U.S.C. SECTION 241, 242 (criminal conspiracy), and 18 U.S.C. SECTION 1961-1962 (Racketeering Influenced and Corrupt Organization Act, hereinafter referred to as "RICO"). Mooring also asserts supplemental state claims for intentional inflictions of emotional distress and defamation.

COURT'S DISCUSSION

I. Standard of Review

A federal district court confronted with a motion to dismiss for failure to state a claim should view the allegations of the complaint in the light most favorable to the plaintiff. See Ibarra v. United States, 120 F. 3d 472, 474 (4th Cir. 1997). The intent of Rule 12(b)(6) is to test the sufficiency of a complaint; "importantly, (a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edward v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1992)). After accepting all well-pleading allegation in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, motions to dismiss are granted only where the plaintiff can prove no set of facts which would entitle him to relief. See Mylan Lab. Inc. v. Matkari, 7 F.3d 1130 (4th Cir. 1983).

II. Eleventh Amendment Immunity

The Eleventh Amendment is perhaps the most curious of all the Constitutional amendments, for it cannot be fully understood by a straight forward perusal of the text. The Eleventh Amendment provides: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by

citizens or subjects of any foreign state." U.S. Const. Amend. XI. Based on this text, it is clear that a citizen of one state cannot sue another state in federal court. It is much less clear, however, whether a citizen may sue his own state, and such a suit does not at first glance appear foreclosed by the amendment's language. Nevertheless, the Supreme Court has consistently interpreted the amendment to bar suit against a state by its own citizens. Edelman v. Jordan, 415 U.S. 651, 662-63.

The instant case involves just such a suit, as Mooring seeks damages against a North Carolina state entity, ECU and its various employees, for asserted civil rights violations. It is well established that the Eleventh Amendment immunity is not limited to suits against a named state. Rather, it extends to state officials and agents. Indeed, "(t)he immunity conferred by (the Eleventh Amendment) extends not only to the state itself, but it also to suits brought against its officers, agents and representatives where the state, though not named, is the real party in interest and will be affected by any judgment." Jacobs v. College of Williams and Mary, 495 F. Supp. 183, 188 (E.D. Va. 1980). Mooring's complaint names ECU and various RCU employees as defendants, all of whom are sued in their official capacities. Because officials capacity suits against state officials operates as suits against the state itself, Will v. Michigan Department of State Police, 491 U. S. 58, 71, (1989) ("(A) suit against a state official in his or her official capacity is not a suit against the official but rather a suit against the official's office"). Mooring's suit is properly construed as a suit against ECU. Thus, the court must address whether ECU, as a state agency, is protected by the Eleventh Amendment immunity.

An inquiry into whether a state university constitutes an "arm of the state partaking of the State's Eleventh Amendment immunity, "Mt. Healthy City Bd. Of Ed. V. Doyle, 429 U.S. 274, 280 (1977), is informed by several factors, including the nature of the university, its funding sources, state control over the university's operations, and the like. See Jacobs, 495 F. Supp. At 189 (listing the factors considered by courts in determining whether a state university is immunized from private suit by the Eleventh Amendment. After consideration of these and analogous factors, numerous states colleges and universities have been held to enjoy the protection afforded by the Eleventh Amendment. See, e.g., Brennan v. University of Kanasa, 451 F. 2d 1287, 1290 (10th Cir. 1971); Walstad v. University of Minnesota Hosp., 442 F.2d 634, 641-42 (8th Cir. 1971).

In examine the status of ECU vis-à-vis the State of North Carolina, the court is guided by the Fourth Circuit's decision in Huang v. Board of Governors of the University of North Carolina, 902, F.2d 1134 (4th Cir. 1990). In that case, the court considered a suit by a tenured university professor who challenged his transfer to a new university department within North Carolina State University. The court concluded that the university enjoyed Eleventh Amendment protection, reasoning that a North Carolina statute did not act as a waiver of the state's immunity. Id. At 1139-40. Mooring points to no authority indicating that a constituent branch of the University of North Carolina system is not entitled to immunity pursuant to the Eleventh Amendment. Instead, Mooring relies on cases holding that municipalities and local governments are amenable to suit despite the Eleventh Amendment. See, e.g., Department of Social Servs., 436 U.S. 658 (1978).

The fact that municipalities may be sued directly by private parties does not mean that states may be similarly sued. The Supreme Court has made clear that municipalities, unlike states and state agencies, are included as "persons" within the meaning of Section 1983 and may be sued directly by private parties, as long as certain requirements are met. Id. At 690. States, however, are not persons within the meaning of Section 1983 and related statutes, and therefore may not be sued under Section 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 66-67 (1989) (holding that neither states nor its officials acting in their official capacities are person under Section 1983). Mooring seeks money damages against ECU and its officers, even though the Eleventh Amendment's protection against suits by private parties seeking to impose a liability which must be paid from public property or funds....." Jacobs, 495 F. Supp. At 188 (citing Quern v. Jordan, 440 U. S. 332 (1979)). The court finds the Fourth Circuit's analysis in Huang persuasive, and holds that the Eleventh Amendment's protections against suits for money damages against states applies to ECU and its officials acting in their official capacities.

This does not end the analysis, however, because there are circumstances in which the Eleventh Amendment's prohibition on suits against states may be overcome. One way this may happen is by consent, and a state may validly waive its Eleventh Amendment Immunity through statutory or constitutional action. Huang, 902 F.2d at 1138 (noting that a state may waive its protection under the Eleventh Amendment, but that courts may find such a waiver only where stated by express language). Alternatively, Congress may abrogate the Eleventh

Amendment through its power under Section 5 of the Fourteenth Amendment. Will, 491 U.S. at 66 (noting that the Eleventh Amendment provides states immunity from suits for money damages unless a state waives it protection or Congress exercise its "in doubted power under Section 5 of the Fourthteenth Amendment to override that immunity."). For example, when Congress enacted Title VII, it acted pursuant to the express grant of authority embodied in Section 5 of the Fourthteenth Amendment and altered the federal-state balance. Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976). In so doing, Congress validly abrogated the Eleventh Amendment for purpose of suits under Title VII. Id. Indeed, it appears that Mooring's claim of racial discrimination in employment is more properly brought under the Title VII scheme. However, Mooring does not rely on Title VII's abrogation of the Eleventh Amendment immunity or refer to any North Carolina statute, which waives the state's immunity. Nevertheless, the court, in construing Mooring's pro se complaint broadly, will examine whether any of Mooring claims are based on statutes that either abrogate immunity or provide an independent state waiver of immunity.

III Statutory Authority

Mooring alleges federal actions pursuant to 42 U.S.C. Section 1983, 1985, and 1988 (civil rights violations), 18 U.S.C. Section 241, 242 (criminal conspiracy), and 18 U.S.C. Section1961-62 ('RICO"). Mooring also alleges North Carolina state law claims for intentional inflictions of emotional distress and defamation. The court will address the federal and state law claims separately.

A. Mooring's Federal Claims

Mooring's reliance on the civil rights statutes is misplaced. "Section 1983 provides a federal forum to

remedy may deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a state for alleged deprivation of civil liberties." Will, 491 U.S. at 71. Thus, Mooring cannot maintain an action against ECU under Section 1983.

The same reasoning applies to 42 U.S.C. Section 1985, . 1986. Just as congress did not abrogate Eleventh Amendment immunity in enacting Section 1983, it also did not abrogate the immunity in enacting Section 1985 or Section 1986. Coffin v. South Carolina Dept. of Social Services, 562 F. Supp. 579, 585 (D.S.C. 1983). To suggest otherwise would create a patchwork of protections not justified by the express statutory language. Additionally, if a state and its agencies are not "person" within the meaning of a Section 1983, they also are not "persons" within the meaning of Section 1985 and 1986. Accordingly, Mooring's claims under Section 1985 and 1986 cannot be maintained. Lastly Section 1988 is merely supplemental to Section1983 and 1985, and provides for an award of attorneys' fees to plaintiffs who prevails on their civil rights claims. Since the court has determined that plaintiff's substantive Section 1983 and 1985 claims must be dismissed, his Section 1988 claims must be dismissed also. See Boling v. National Zinc Co., 435 F. Supp. 18, 23 (N.D. Okla. 1976).

Mooring's criminal conspiracy claims fare no better. Mooring's complaint doesn't allege facts suggesting any criminal conspiracy against him. Perhaps anticipating this, Mooring's response to defendants' motion to dismiss does not address the criminal conspiracy counts, suggesting he may have conceded they lack merit. In any case, it is well settled that 18 U.S.C. Section 241, 242 do not create a

private cause of action. Cok v. Consentino 876 F 2d 1, 2 (1st Cir.1989). Stated simply, because these statutes do not give rise to civil claims for damages, Mooring's claims under 18 U.S.C. Section 241, 242 must be DISMISSED.

Finally, Mooring's RICO claim must also be dismissed. A RICO claim, pursuant to 18 U.S.C. Section U.S.C. Section 1962, may be asserted only if a plaintiff can show, inter alia, that "each "RICO" defendant conducted an enterprise through a pattern of racketeering behavior." Palmetto State Med. Ctr. v. Operations lifeline, 117 F 3rd 142, 148 (4th Cir. 1997). Even the most forgiving reading of Mooring's complaint reveals that he has failed to allege any pattern of racketeering on behalf of ECU and its employees. In his complaint, Mooring alleges a cause of action for employment discrimination, but never alleges any facts indicative of a conspiracy or concerted racketeering activity. Accordingly, his RICO claims must also be DISMISSED.

B. Mooring's State Claims

Finally, Moorings raises North Carolina state law claims for intentional infliction of emotional distress and defamation. Absent waiver, federal courts are barred by the Eleventh Amendment from considering claims that state officials violated state law. Pennhurst v. Halderman, 465 U.S. 89, 121 (1984) (noting that a "federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the "Eleventh Amendment" and concluding that "a claim that state officials violated state law a-in carrying out their official responsibilities is a claim against a State that is protected by the Eleventh Ammendment"). Mooring has not argued that North Carolina has waived its Eleventh Amendment immunity for claims of intentional

inflictions of emotional distress and dafamation. In fact, Mazzuco v. North Carolina Board of Medical Examiners, 31 N.C. App. 47, 49, 228 S. E. 2d 529, 531 (1976) (explaining that North Carolina has not waived its sovereign immunity from suit on claims of slander and libel).. Accordingly, Mooring's state claims must be DISNISSED.

CONCLUSION

For the forgoing reasons, defendants' motion to dismiss is GRANTED in all respects. The clerk is directed to close this case.

This 6th day of August, 2002.

s/Malcolm J. Howard
Malcolm J. Howard
United States District Judge

At Greenville, NC
5

I certify the forgoing to be true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
s/Lisa W. Lee
Deputy Clerk

Linwood E. Mooring Jr., Propria Persona
1306 Drum Avenue
Greenville, North Carolina 28734
(919) 757 - 1568

App. 12B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

LINWOOD MOORING JUDGMENT IN A CIVIL CASE

Plaintiff

Case no: 4:02-CV-62-H3

v.

EAST CAROLINA UNIVERSITY, et al

Defendants.

_____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered it verdict.

X

_____ Decision by Court. This action came to trail or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendant's motion to dismiss is granted. Plaintiff shall have and recover nothing of the defendants and this case is closed.

SO ORDERED – s/Malcolm J. Howard, United States District Judge.

This Judgment filed and entered on August 6, 2002 and copied mailed to:

Linwood E. Mooring Pro Se
1306 Drum Avenue
Greenville, NC 27834

Thomas O. Lawton, III
NC Dept. of Justice
P.O. Box 629
Raleigh, NC 27602

August 6, 2000 David W. Daniel

s/Lisa W. Lee

App. 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

Linwood E. Mooring	) Civil Action No.
	) 4:02-CV-62-H3
	)
	) Notice of Appeal
Plaintiff / injured party	)
	)
vs	)
East Carolina University,	)
et al	)
Defendants	)

Notice is hereby given that Linwood E. Mooring, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Order (Motion to Dismiss) entered in this action on the 6th day of August, 2002.

s/Linwood E. Mooring
Plaintiff, pro se
1306 Drum Avenue
Greenville, N. C. 27834

3 "[A] motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. **Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir.), cert. denied, 444 U.S. 899, 100 S. Ct. 208, 62 L.Ed.2d 135 (1979).** We must take the well-pleaded allegations of the complaint as true, and construe the complaint, and all reasonable inferences arising there from, most favorably to the pleader. **United States v. Mississippi, 380 U.S. 128, 143, 85 S. Ct. 808, 816, 13 L.Ed.2d 717 (1965); see also Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1983); Bramlet v. Wilson, 495 F.2d 714, 717 (8th Cir.1974). " Morton v. Becker, 793 F.2d 185,187 (8th Cir.1986); accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957).** In considering a motion to dismiss, courts accept a plaintiff s factual allegations as true, but reject conclusionary allegations of law and unwarranted inferences. **Silver v. H&R Block. Inc.,105 F.3d 394,397 (8th Cir.1997).** The Court may not consider materials outside the pleadings on a motion to dismiss. **Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1992).** The court also cited **Rule 8(f) FRCP**, which holds that all pleadings shall be construed to do "substantial justice". Justice administered according to the rules of substantive law, not withstanding errors, of procedures. **Interstate Bankers Corporation v. Kennedy, D. C. Mun. App., 33 A.2d 165, 166.**It could also be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would it self be volatile of procedural due process as it would deprive a pro-se litigant of equal protection of the law visa vis a party who is presented by counsel. If your pleadings are not perfect, don't panic. Federal Judges have set forth a doctrine that instructs courts

Supreme Court, U.S.
FILED

02 1618 MAR 7 - 2003

No OFFICE OF THE CLERK

In the Supreme Court of the United States

LINWOOD E. MOORING,

Petitioner,

V.

EAST CAROLINA UNIVERSITY, et al

Respondent,

On Petition for Writ of Certiorari
To The Fourth Circuit Court Of Appeals

APPENDIX 14 - 46

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36 pp

3 "[A] motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. **Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir.), cert. denied, 444 U.S. 899, 100 S. Ct. 208, 62 L.Ed.2d 135 (1979).** We must take the well-pleaded allegations of the complaint as true, and construe the complaint, and all reasonable inferences arising there from, most favorably to the pleader. **United States v. Mississippi, 380 U.S. 128, 143, 85 S. Ct. 808, 816, 13 L.Ed.2d 717 (1965); see also Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1983); Bramlet v. Wilson, 495 F.2d 714, 717 (8th Cir.1974). " Morton v. Becker, 793 F.2d 185,187 (8th Cir.1986); accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957).** In considering a motion to dismiss, courts accept a plaintiff s factual allegations as true, but reject conclusionary allegations of law and unwarranted inferences. **Silver v. H&R Block. Inc.,105 F.3d 394,397 (8th Cir.1997).** The Court may not consider materials outside the pleadings on a motion to dismiss. **Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1992).** The court also cited **Rule 8(f) FRCP**, which holds that all pleadings shall be construed to do "substantial justice". Justice administered according to the rules of substantive law, not withstanding errors, of procedures. **Interstate Bankers Corporation v. Kennedy, D. C. Mun. App., 33 A.2d 165, 166.**It could also be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would it self be volatile of procedural due process as it would deprive a pro-se litigant of equal protection of the law visa vis a party who is presented by counsel. If your pleadings are not perfect, don't panic. Federal Judges have set forth a doctrine that instructs courts

App. 15

to give some latitude to pro-se parties when they make pleading mistakes. **Picking v. Penn Railway, 151 F2d 240. In a fair system victory should go to the party with a better case, not the better representation.**

App. 15B

Even if the issue of the defendants' true motivation for placing the plaintiff on administrative leave affected the qualified immunity analysis, the defendants have failed to demonstrate the absence of a genuine issue of material fact on the matter. When determining a qualified immunity issue on a motion for summary judgment, the court must still believe the evidence of the nonmovant and draw all justifiable inferences in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (stating that in ruling on motion for summary judgment, court is not to make credibility determinations, weigh evidence, or draw from facts legitimate inferences for movant). Even more particularly, "the determination [*10] of objective reasonableness must be based on a version of the facts most favorable to the plaintiff." Lampkin, 7 F.3d at 435. Even in light of the new evidentiary submissions by the defendants in this case, this court cannot say that the defendants are entitled to a judgment as a matter of law. The motion of the defendants for the entry of summary judgment shall be denied as to their claims of qualified immunity.

42 U.S.C. § 1983 (emphasis added). Of principal import to this issue is the Court's decision in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). The Court held there that local governing bodies can be sued directly under § 1983 for monetary, declaratory, and injunctive relief in those situations where [**18] the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. In addition, local governments, like every other § 1983 "person," may be sued for constitutional deprivations resulting from governmental "custom," even though such custom has not received formal approval through the government's official decision-making channels. *Id.* **Even though *Monell* did not specifically address the question of whether a state university is a "person" under § 1983, its reasoning logically requires us to conclude that a state university is a "person" within the meaning of § 1983.**

Since *Monell* was announced, other jurisdictions have relied on its rationale and have declared a university to be a "person" within § 1983. n8 *See Walsh v. Louisiana [*901] High School Athletic Association*, 616 F.2d 152 (5th Cir. 1980) (while the association was neither an agency of Louisiana nor provided for under Louisiana law, the court held that it was suable as a person under § 1983); *Gay Student Services v. Texas A&M [**19] University*, 612 F.2d 160 (5th Cir.), *cert. denied*, 449 U.S. 1034, 66 L. Ed. 2d 495, 101 S. Ct. 608 (1980) (state university was a "person" for purposes of this section); *Weisbord v. Michigan State University*, 495 F. Supp. 1347 (D. Mich. 1980) (state university, its board of trustees and president were "persons" within meaning of this section); *Johnson v.*

App. 17

San Jacinto Jr. College, 498 F. Supp. 555 (D. Tex. 1980) (junior college is a "person" within the meaning of this section); *Aumiller v. University of Delaware*, 434 F. Supp. 1273, 1306 (D. Del. 1977) ("University . . . . could be treated as a person for purposes of actions brought pursuant to [§ 1983]."). Also see, Victorija Smith, Appellant, v. St. Louis University.

App. 17B

5 District courts have discretion to hear pendent state claims where there is substantial federal claims arising out of a common nucleus of operative facts. **28 U.S.C. Sections 136(a). United Mine Workers v. Gibbs, 383 U.S. 715(1966)** This is a "doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodate a range of concerns and values". **Carnegie-Mellon Univ. v. Cohill 484 U.S. 343, 350(1988).** Pendent jurisdiction is a discretionary matter whereby federal court may allow assertion of nonfederal claims for which no independent jurisdictional grounds exists along with recognized federal claims between same parties who are properly before the court, provided relationship between federal claims and state claims permit conclusion that entire action before the court comprises but one constitutional case. **Schwab v. Erie Lackawanna R. Co., D.C.Pa., 303 F. Supp.1389, 1399**

Nor is the immunity granted under the doctrine to the agents and the corporation destroyed because the agents are sued individually. As the Court in *Cole v. University of Hartford*, 391 F. Supp. 888, 893 (D.Conn. 1975) put it: "Simply joining corporate officers as defendants in their individual capacities is not enough to make them persons separate from the corporation in legal contemplation. The plaintiff must also allege that they acted other than in the normal course of their corporate duties." This is not to say that there have not been exceptions to the doctrine in certain of the cases. Thus, it has been said that the doctrine is inapplicable [**37] "where the plaintiff has alleged that the corporate employees were dominated by personal motives or where their actions exceeded the bounds of their authority." Note, 13 Ga. L. Rev. at 608. We applied such an exception in *Greenville Publishing*, where, after stating that "we agree with the general rule" as, stated in the intracorporate conspiracy doctrine in *Nelson Radio*, we added that "an exception may be justified when the officer has an independent personal stake in achieving the corporation's illegal objective." 496 F.2d at 399. And in *Hodgin v. Jefferson*, 447 F. Supp. 804, 807 (D.Md. 1978) (emphasis in original), it was held that "*unauthorized* acts [of an employee] [*1253] in furtherance of a conspiracy may state a claim under § 1983(3). Thus, while authorized acts of the officials would constitute corporate action, (and hence would avoid a conspiracy charge), unauthorized acts would not." n4

Qualified immunity

Since neither Mr. Hilbun nor any of the defendant aldermen are entitled to be protected by absolute immunity in this case, the court must now analyze the applicability of qualified immunity for their actions. Hughes, 948 F.2d at 920. The defendants in this case have been sued in both their individual and official capacities. Qualified immunity will protect them, if at all, only in their individual capacity. Lynch v. Cannatella, 810 F.2d 1363, 1371 (5th Cir. 1987); Universal Amusement Co., Inc. v. Hofheinz, 646 F.2d 996, 997 (5th Cir. 1981); see Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Qualified immunity [*22] will not preclude the liability of an officer sued in his official capacity. Universal, 646 F.2d at 997. Nonetheless, due to their status as public officials, the defendants in this case are entitled to qualified immunity for their individual liability unless the constitutional right asserted by the plaintiff was "clearly established" at the time of the plaintiff's conduct. Whether the law is clearly established turns upon whether "the contours of the right established are sufficiently clear that a reasonable official would understand that what he is doing violates that right." Thomkins, 26 F.3d 605, 606; Boddie v. Columbus, 989 F.2d 745, 748 (5th Cir. 1993); Click v. Copeland, 970 F.2d 106, 109 (5th Cir. 1992). Before determining if the right was clearly established, however, this court must determine if the plaintiff has validly asserted the violation of a constitutional right at all. Siegert v. Gilley, 500 U.S. 226, 231, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1992). Therefore, this court now turns to the claims asserted by the plaintiff in this matter.

CLINTON, PETITIONER v. PAULA CORBIN JONES
Certiorari to the United States Court of Appeals for the Eighth Circuit No. 95-1853.
Argued January 13, 1997 -- Decided May 27, 1997

Respondent sued under 42 U.S.C. Sects. 1983 and 1985 and Arkansas law to recover damages from petitioner, the current President of the United States, alleging, inter alia, that while he was Governor of Arkansas, petitioner made "abhorrent" sexual advances to her, and that her rejection of those advances led to punishment by her supervisors in the state job she held at the time. Petitioner promptly advised the Federal District Court that he would file a motion to dismiss on Presidential immunity grounds, and requested that all other pleadings and motions be deferred until the immunity issue was resolved. After the court granted that request, petitioner filed a motion to dismiss without prejudice and to toll any applicable statutes of limitation during his Presidency. The District Judge denied dismissal on immunity grounds and ruled that discovery could go forward, but ordered any trial stayed until petitioner's Presidency ended. The Eighth Circuit affirmed the dismissal denial, but reversed the trial postponement as the "functional equivalent" of a grant of temporary immunity to which petitioner was not constitutionally entitled. The court explained that the President, like other officials, is subject to the same laws that apply to all citizens, that no case had been found in which an official was granted immunity from suit for his unofficial acts, and that the rationale for official immunity is inapposite whereonly personal, private conduct by a President is at issue. The court also rejected the argument that, unless immunity is available, the threat of judicial interference with the Executive Branch would violate separation of powers.

WILL v. MICHIGAN DEPARTMENT OF STATE POLICE ET AL.

No. 87-1207

SUPREME COURT OF THE UNITED STATES

491 U.S. 58; 109 S. Ct. 2304; 105 L. Ed. 2d 45; 1989 U.S. LEXIS 2975; 57 U.S.L.W. 4677; 49 Fair Empl. Prac. Cas. (BNA) 1664; 50 Empl. Prac. Dec. (CCH) P39,067

December 5, 1988, Argued
June 15, 1989, Decided

PRIOR HISTORY:

CERTIORARI TO THE SUPREME COURT OF MICHIGAN.

DECISION: States and state officials acting officially held not to be "persons" subject to liability under 42 USCS 1983.

SUMMARY: An employee filed in Michigan Circuit Court a claim against the Michigan Department of State Police and the Michigan Director of State Police in his official capacity, alleging that both parties had denied the employee a promotion for an improper reason, in violation of 42 USCS 1983, which provides that any "person" acting under color of state law in violating another's federal

constitutional rights is liable to the injured party. After the Circuit Court remanded the case to the Michigan Civil Service Commission for a grievance hearing, the employee filed suit in the Michigan Court of Claims raising an essentially identical 1983 claim, the Civil Service Commission found in the employee's favor, and a state court judge, acting in both the Circuit Court and the Court of Claims cases, held that (1) the employee had established a violation of the Federal Constitution, (2) the State Police and the Director of State Police were persons for purposes of 1983, and (3) although the Circuit Court action was barred under state law, the Court of Claims action could go forward. The Michigan Court of Appeals, holding that a state is not a "person" under 1983, vacated the judgment against the Department of State Police and remanded the case for determination of the possible immunity of the Director of State Police from liability for damages. Granting discretionary review, and affirming in part and reversing in part the judgment of the Court of Appeals, the Michigan Supreme Court held that neither a state nor a state official acting in his or her official capacity is a "person" under 1983.

STATEMENT OF FACTS

17. All events depicted herein occurred over a ten year period, beginning around the middle of 1992 through present, unless otherwise stated.

18. PLAINTIFF has spoken verbally with the Internal Auditors, directors and managers many times at ECU stating clearly how PLAINTIFF was being treated differently from all other operators and other state employee. PLAINTIFF has been struggling with ITCS/CIS managers to get promoted in ITCS/CIS every since 1988.

18.1 PLAINTIFF sent complaints to EEOC and other government agencies about how I was being treated in ITCS/CIS. They investigated but nothing changed. When I originally filed my first complaint, all I did it for was to get federal attention on the matter thinking that with a federal investigation the DEFENDANTS would change, but I was wrong things got worse.

18.2 The DEFENDANTS shows no respect for federal law, state law or the equal opportunity policies of East Carolina University.

18.3 PLAINTIFF did many things to try to get ITCS/CIS Management Team to correct the wrongs that they had done to PLAINTIFF, which included but was not limited to filing claims to EEOC and the U.S Department of Labor both organization are located in Raleigh, NC.

18.4 Plaintiff believes that the aforementioned government organizations were misled in their investigate of Plaintiff complaints for no action were taken, even though my rights had clearly been violated and clearly illustrated in the complaint.

18.5 The first complaint that I sent to EEOC in 1997, was patterned after the McDonnell Douglas framework, wherein initially I was required to show that (1.) I had applied for and qualified for a position

with ECU, (2.) that I was rejected for the position and (3.) and that the DEFENDANTS continued to seek applications for the position, or was filled with a white person. Which is exactly what happened to me, the position was given to a white person. PLAINTIFF still have a copy of this complaint.

19. To date PLAINTIFF has received no help from anyone, PLAINTIFF still has not been promoted or advanced in any way. Therefore, PLAINTIFF had no other choice but to expose the harassment, conspiracies against rights, deprivation of rights and to seek justice by acquainting himself with the appropriate laws to bring this action in Court Propria Persona.

19.1 To date PLAINTIFF has been subject to continuous and countless conspiracies orchestrated by DEFENDANTS to willingly, maliciously and intentionally deprive PLAINTIFF of his rights to receive progress interim pay increases, promotions, reclassifications, training and the opportunity to do the job that PLAINTIFF has been assigned to do without being threatened or harassed as has benefited and enjoyed by some, if not all, other operators.

20.Because of numerous complaints sent to the Chancellors office about PLAINTIFF and other minorities being intentionally denied promotions in ITCS/CIS, in August of 1992, the Internal Auditor, with the backing of the Chancellor's office, instructed ITCS/CIS to open up five new training positions. These steps were taken to insure that PLAINTIFF, other minorities and senior operators who had been passed over many times would have the opportunity to train first and move on to higher paying jobs.

20.1PLAINTIFF should have been among the first operators trained in the new positions, since PLAINTIFF and other minority operators were the employees pushing to get something done so that all operators could advance. PLAINTIFF was also one of

the most senior operators and the only black male that participated.

20.2 DEFENDANTS BOLTON, MARSHBURN, and SCHWARTZ who were members of the ITCS/CIS Management Team (hereinafter, PAC), were some of the managers in charge of setting up the training program.

20.3 PAC is an enterprise that has operated in ITCS/CIS for over 18 years. The DEFENDANTS that make up the team (association in fact) make all of the major decisions (managerial, budget (handling the excess in the budget), promotions, reclassifications, restructuring the department, training, etc).

20.4 PAC asked PLAINTIFF if he would agree to allow them to pick the operators that would be trained the way PAC wanted to, to get their plan started. PAC insured PLAINTIFF that he would have his chance to train.

20.5 PLAINTIFF agreed with PAC which established a verbal contract between PLAINTIFF and PAC.

20.6 PLAINTIFF didn't know that PAC had conspired to deceive him. PAC had come up with a plan that led me to believe that PAC would be fair and treat all operators equally.

20.7 PLAINTIFF has a degree in Electronic Data Processing which trained me to write computer code such as Cobol, Fortran and RPG. Therefore, I would have needed very little training to have become an excellent computer programmer for ECU, but I was denied that opportunity.

20.8 On or about October 15, 1992, PAC denied PLAINTIFF another opportunity to participate in the training program. PAC chose two white operators that was not senior to me nor did they participate in the struggle to get the program started.

20.9 Shortly thereafter, the training program was closed. PAC breached its agreement with PLAINTIFF.

When PAC denied me an opportunity to train, PAC breached it's contract with me and caused me to become an injured party.

21. On or about the middle of spring, 1992 State Personnel (hereinafter, SP) concluded a study of all Computer Operations / Data Processing positions in ITCS/CIS and gave their report that should have made provisions for all operators to advance. PLAINTIFF was denied a reclassification.

21.1 PLAINTIFF should have advanced from an operator II to an Operator III which would have given me a sizeable raise. Shortly thereafter, PLAINTIFF's job title was changed from a Computer Operator II to a Computer Operator. This was a lower grade than PLAINTIFF was hired with This was a trick by BOLTON and other unknown conspirers to prevent PLAINTIFF from getting an authentic reclassification.

21.2 On or about June 20, 1994, after SP did another study of all operators positions (many of the operators complained to SP that they had not been reclassified), shortly thereafter BOLTON revised all computer operators positions again which changed PLAINTIFF position from a Computer Operator to a Senior Computer Operator.

21.3 When PLAINTIFF was moved to a higher grade, the changed only put PLAINTIFF back to PLAINTIFF's original position, a Computer Operator II. The Computer Operator Senior and the Computer Operator II is basically the same position, because my grade went up but salary stayed the same.

21.4 BOLTON told PLAINTIFF that because my salary was already at the top of my new pay grade, I would get very little or no raise. PLAINTIFF received about a $10.00 more a month pay raised, which other operators received much more. All other operators were reclassified to Senior Computer Operators (who

were grades lower than PLAINTIFF) and their pay were adjusted to match the pay grade giving them large raises.

21.5 When BOLTON told PLAINTIFF that I was already at the top of my pay grade, BOLTON was not telling the truth, for PLAINTIFF is at the same pay grade today (about seven years later) and PLAINTIFF is just half way now according to the salary chart posted on the State Personnel website. When PLAINTIFF was denied a reclassification to Lead Operator Position, PLAINTIFF suffered a great financial loss and became a injured party.

21.6 PLAINTIFF was denied another opportunity to be reclassified to Lead Operator in November of 1994 by BOLTON.

22. PLAINTIFF has applied for over 25 positions at ECU since I was hired and was denied each time although PLAINTIFF was qualified for either position. PLAINTIFF has been denied the clearly established right to equal protection of the law. When one consider that Plaintiff has worked for ECU for over 18 years, it is hard to believe that Plaintiff is still in the same position Plaintiff started with.

22.1 PLAINTIFF has five years of experience in installing and repairing telephones that included but not limited to splicing and installing cables, pulling cables and installing the telephones in homes and business. PLAINTIFF also had experience in wiring houses installing panel boxes, electrical wires, sockets, fixtures, etc. All this experience combined with my computer knowledge made me an excellent pick for jobs in telecommunications or networking.

22.2 Also PLAINTIFF was a Communications Specialist in the U. S. Army, wherein PLAINTIFF was trained to set up large field radio (31M and O5C) that included, but not limited to, connecting cables, setting up antennas, mounting the equipment and tuning the equipment to pick up the proper

transmitting site (similar to microwave communications).

22.3 PLAINTIFF supervised and trained other soldiers to run the equipment, yet PLAINTIFF was denied many opportunities to be promoted or to even train to work in the telecommunication or networking field.

22.4 On or around February 15, 1994 PLAINTIFF was qualified for and applied for a Telecommunication Equipment Technician and was rejected. PLAINTIFF applied for numerous other Telecommunication jobs but was rejected each time.

23. For the last seven or eight years DEFENDANTS BOLTON and NOBLES conspired to control three positions; the Operations Manager, First Shift Supervisor and First Shift Lead Operator, arranging those jobs in such a way that clearly deprived a Lead Operator position from being opened on first shift which should have made an opening for PLAINTIFF to advance.

23.1 When their was a Lead Operator's position, BOLTON moved that position to the weekend because he knew PLAINTIFF wouldn't want to give up a 8 to 5, Monday through Friday job to work on week ends. PLAINTIFF did apply for the Lead Operator's position although it was on the weekend but again I was denied a promotion two times. On both occasions the jobs were given to white operators.

23.2 The other shifts (2nd and 3rd) always had a Supervisor and Lead Operator on Monday-Friday.

23.3 HOWELL, (who was the Lead Operator for third shift) was eventually moved to first shift and filled the slot for the Lead operator position. This was another way of preventing PLAINTIFF from advancing, for 1st shift could not have but one Lead Operator. HOWELL has held the Lead Operator slot on first shift for years, which should have been the Lead Operator position for me.

23.4 There has always been an open slot (Operation Manager) between BOLTON (the formal Director of Operations and NOBLES (the first shift supervisor) that should have been filled by NOBLES that would have opened a 1st shift supervisor slot that should have gone to PLAINTIFF since PLAINTIFF was the senior and most experienced operator in the department and on first shift. PLAINTIFF was denied both the Lead Operator and the Supervisor.

24 For most, if not all, of the time that PLAINTIFF has been hired for ECU, DEFENDANTS NOBLES or HOWELL were always responsible for giving me a performance rating (evaluation). In each review, regardless as to how perfectly PLAINTIFF performed his duties, PLAINTIFF was never given a performance rating that would measure up to getting a performance pay increase, nor did it reflect PLAINTIFF true performance grade.

24.1 The aforementioned DEFENDANTS would always give PLAINTIFF a bad grade in one or maybe two categories (good or below good) which would stop PLAINTIFF from getting a performance bonus. I believe that the DEFENDANTS denied PLAINTIFF a good grade as a means of increasing their own percentage raises (obtaining a benefit that they would not have normally gotten).

24.2 HOWELL has participated in grading PLAINTIFF when he would benefit when PLAINTIFF was given a bad performance grade. This gave HOWELL an incentive to give PLAINTIFF a bad grade. When PLAINTIFF did not get a performance increase, the excess money left in the budget could be divided between HOWELL, NOBLES and other DEFENDANTS.

24.3 Although HOWELL and PLAINTIFF started working for ECU about the same time, in fact, PLAINTIFF was a computer operator before HOWELL, and more educated, PLAINTIFF estimate that

HOWELL earns $15,000.00 more a year than PLAINTIFF.

24.4 To further prevent PLAINTIFF from being promoted and having a good working relationship with the other operators, DEFENDANTS BOLTON, HOWELL and NOBLES slandered PLAINTIFF's good name, calling PLAINTIFF lazy, calling PLAINTIFF an idiot and telling other new operators that PLAINTIFF would just sit in the corner and write poetry all day and make them do all the work.

24.5 Once BOLTON, while PLAINTIFF was training a student, told that person to not believe a word PLAINTIFF said, clearly creating some doubt in the mind of the student about the abilities of PLAINTIFF as well as the type of person PLAINTIFF was. Tactics like that caused many conflicts between PLAINTIFF and newly hired operators who caused PLAINTIFF a tremendous amount of needless stress.

24.6 The aforementioned DEFENDANT knew that the statements were not true, and knew or should have known that all negative information would spread rapidly and would destroy PLAINTIFF's good name.

25. On February 2, 1996 DEFENDANTS BOLTON and HUTCHINSON conspired to willingly and intentionally deprive PLAINTIFF and other operators another opportunity to advance. The job title was a Computer Specialist III, Job #030. The Computer Specialist III was one of the aforementioned training positions that the "Auditor" said should be filled by operators that had been closed by PAC.

25.1 As a way to deny PLAINTIFF the position, the job description was changed to require a four-year degree (which has never been a requirement). The DEFENDANTS chose a person who was not a state employee to fill the job, who was not as qualified as PLAINTIFF. The person who received the job did not

have a four year degree and was not a state employee at the time.

25.2 PLAINTIFF was clearly qualified for the position and was working for the state at that time. It is a clearly established state hiring policy that states that when filling a vacant position, if there is a qualified person already working for the state applying for that position, that person has "priority consideration" for the opened position over anyone from the outside.

26. In January of 1997 three Applications programmer II jobs (job number #009, #010 and #44645) were opened that PLAINTIFF was qualified for and applied for. PLAINTIFF should have been allowed to, at least, train in one of the positions since PLAINTIFF had already been passed over for promotions and training many times.

26.1 The job description required that the applicant have at least a two year degree in Data Processing with Cobol experience, which PLAINTIFF has both. Yet, PLAINTIFF was again denied a promotion three times.

26.2 On March 14, 1997 jobs #009 and #010 were re-advertised, although PLAINTIFF was clearly qualified for either position. On April 1, 1997 a white operator was given positions, job #44645, who didn't have a Data Processing degree nor Cobol experience.

26.3 PLAINTIFF was discriminated against when PLAINTIFF was deprived of an opportunity to be promoted, instead the job was given to an employee who didn't have Cobol training nor a college degree. "PLAINTIFF was clearly qualified yet denied the position and became an injured party.

26.4 On May 25, 1997, two other operators were given the remaining two positions #009 and #010 . Both of the positions were given to two white operators, one did not have Cobol training and

neither of them had as much seniority as PLAINTIFF. PLAINTIFF became an injured party when the aforementioned DEFENDANTS willingly and intentionally denied PLAINTIFF two more opportunities to be promoted.

27. On or about February 1, 1998 BOLTON assigned PLAINTIFF a project to help PLAINTIFF to be promoted (so I was led to believe). PLAINTIFF had to set up an Internet website. I thought that this was a great opportunity, for in the past all operators that did a project in the department, of any kind, was eventually hired into higher paying positions.

27.1 PLAINTIFF, without hesitation, took on the challenged and within thirty days had set up a website that work perfectly. In fact, PLAINTIFF was one of the first employees in the department to learn HTML, the main programming language used to set up a website.

27.2 Although PLAINTIFF had illustrated to BOLTON and other managers that I could do the work, I was denied three opportunities to be promoted to a Web Developing position and two system positions. All five of these position were opened at the same time, and I was interviewed and qualified for all five of them.

27.3 On or around October 26, 1998 PLAINTIFF applied for another Application Analysts. Prog. I, job # 08325 that "PLAINTIFF" was qualified for (one of the three aforementioned web developing jobs), John Snowden, who was hired for the position resigned.

27.4 PLAINTIFF had already been interviewed for the position as mentioned above, and had shown BOLTON and the former Web project manager that PLAINTIFF could do the work by doing a project, but PLAINTIFF was again denied an opportunity to be promoted.

27.5 On or around November 8, 1998 PLAINTIFF applied for 2 System Programmer I (positions 8718 and 8719) and although I was qualified I was denied

either of the positions. Hudson gave both of these positions to two white operators, who were no more qualified for the position than PLAINTIFF.

28. On or about September 1, 2000 BOLTON and NOBLES conspired to have PLAINTIFF transferred into one of the worst positions in the department. ITCS/CIS had taken responsibility for another computer center (Brody School of Medicine computer center (hereinafter, GE99)).

28.1 PLAINTIFF believes unequivocally that BOLTON was retaliating against me for being a witness in a discrimination lawsuit against ECU, specifically ITCS/CIS. In the trail, I was asked a series of questions which I swore under oath that I would tell the truth, and that was all I did.

28.2 BOLTON'S plan was to have all operators cross-trained to operate the computer systems at both locations, GE99 and Austin Building Computer center, (hereinafter, Austin). PLAINTIFF was one of the first operator sent to GE99 to train, and the only operator from any shift who was transferred permanently to GE99.

28.3 PLAINTIFF was told that he would only stay for a short time (3-4 months), afterward PLAINTIFF would be sent back to his original position at Austin and another 1st shift operator (Rich Proctor) would have to go to GE99 to train. It is easy to see now that the plan was for PLAINTIFF only to be sent to train at the other site and once over there, I would never get my old job back.

28.4 The aforementioned 1st shift operator, did not cross-train at all. To date he has not cross-trained. While PLAINTIFF had to learn old technology, he was at AUSTIN being trained to operate some of the world's most modern Servers. He has been in the department for only a few years, and is being trained to do a job that would pay him much more money.

28.5 The aforementioned operator was moved permanently into PLAINTIFF slot at Austin while PLAINTIFF was helping ITCS/CIS to improve GE99. I became an injured party when I was transferred to GE99 (without my knowledge), forced to learn old useless technology and PLAINTIFF's position at Austin was given to another operator.

28.6 All other operators and manager who were running GE99 were either promoted, reclassified or given permanent positions and the heavy burden that they were carrying was lifted. Although PLAINTIFF has been forced to carry much of the weight that was taken off them, PLAINTIFF has not been treated equal to them. PLAINTIFF has not been promoted nor reclassified, yet I carried much of the burden that they once carried and became an injured party.

28.7 While at GE99 PLAINTIFF was forced to learned the operations at that site so that others operators could get promotions, while PLAINTIFF was being denied that opportunity and falling behind on the newer technologies that PLAINTIFF could have learned at Austin.

28.8 Plaintiff was forced to learn another persons job so the she could get promoted, but I was not allowed to train so that I could get promoted. In other words, I am smart enough to learn someone else's job, but was qualified to learn another job so that I could be promoted.

29. Around the middle of 2001 DEFENDANT NORRIS, BOLTON and SCHWARTZ conspired to deprive PLAINTIFF and other operators the opportunity to advance by moving the Help Desk out of Operations and from under the supervision of BOLTON to NORRIS supervision. When this first happened PLAINTIFF thought that this was a good move because it lifted some of the burden from the operators. PLAINTIFF did not know that this move

was only a disguise to deprive PLAINTIFF of a way to be promoted.

29.1 For years PLAINTIFF and other operators handled the Help Desk, assisting users daily. PLAINTIFF dealt with all types of user problems that involved both hardware and software troubleshooting. PLAINTIFF went to seminars to learn to run the PHD program, the Help Desk software for logging, following up and assigning user problems to the proper person who could handle their specific need.

29.2 When the Help Desk was moved and new people were hired to do those jobs, their starting grade was 59 or 60. This was five to seven grades below all the operators who were working at that time. Therefore even if PLAINTIFF or any other operator wanted the jobs, it would not make sense to take one because it would be a big cut in pay.

29.3 Shortly after the new employees were in their positions NORRIS reclassified their positions to Consultant I with a pay grade of 70. These people who were less qualified than most, if not all, operators were upgraded 10 pay grades (60-70), and this was done to avoid promoting PLAINTIFF or any other computer operators who had the Help Desk responsibilities for years, and who are clearly qualified for the Consultant I position.

29.4 These new employees were given about a $10,000.00 yearly raise. PLAINTIFF was denied an opportunity to even to apply for those Consultant I positions, clearly depriving PLAINTIFF of a big raise.

29.5 PLAINTIFF never thought that one day the Help Desk jobs would be reclassified five grades above the Senior Operator grade or three grade levels above the Lead Operator only a few months after the positions were filled.

29.6 Today, the Help Desk seems to be used as a back door for NORRIS and other managers

to get new employees into the department clearly avoiding PLAINTIFF or any operator and shortly thereafter upgrading them to higher paying jobs, clearly denying PLAINTIFF or any other operator an opportunity even to apply for the Consultant I positions.

29.7 The Consultant I position should be another training or entry level position established so that all Computer Operators would have a career path. Computer operators do not have a career path at ECU.

30. On or about October 1, 2001, HOWELL became PLAINTIFF new supervisor. On October 17, 2001 (only two weeks later) HOWELL issued PLAINTIFF the first written warning in ITCS/CIS since PLAINTIFF had started working for ECU.

30.1 No one in the department has ever been written up for not getting the personal approval of his supervisor when calling in to take a day off, being late, sick or whatever the circumstance may have been, as PLAINTIFF was.

30.2 Although, most if not all, operators were doing the same thing PLAINTIFF was doing, (calling into the active shift and letting them know that they would not be in), in fact HOWELL was doing it himself, no other operator had ever been written up for it. I was deprived a privilege that all other operators were allowed to enjoy and was almost terminated because of it.

30.3 PLAINTIFF discovered later that this was the beginning of conspiracy spear-headed by DEFENDANTS HOWELL, NOBLES, BOLTON and other co-conspirators to have PLAINTIFF terminated. At the time that I received the written warning I was not aware that there was a problem between Howell and I. My side of the situation was never heard before I was almost terminated.

30.4 A few month prior to PLAINTIFF being written up, PLAINTIFF was told by David Whitehurst that

HOWELL had called him and ask him did he want to work on first shift, because HOWELL was going to get rid of PLAINTIFF.

30.5 PLAINTIFF consulted with BOLTON about the situation and even asked to be moved back to PLAINTIFF original slot at Austin, but since it caused so much troubled with the other operators, (because none of them wanted to work with HOWELL), PLAINTIFF emailed BOLTON and said that PLAINTIFF would try to work things out with HOWELL.

30.6 PLAINTIFF was unaware at that time that BOLTON was working with HOWELL and NOBLES to have PLAINTIFF terminated. PLAINTIFF became aware of the conspiracy while reading the written warning wherein the intent of the DEFENDANTS were made much clearer.

30.7 In furtherance of HOWELL, NOBLES and BOLTON's plan to have PLAINTIFF terminated, a couple of weeks after issuing me the written warning, HOWELL gave me the worst progress interim review (performance evaluation) I have ever had. This was done in furtherance of the conspiracy, specifically to help justify another written warning.

30.8 Even in the progress interim review that should have been telling PLAINTIFF the areas in my work performance that should be improved, not only did HOWELL lie and made misleading statements, but even in the evaluation HOWELL had threats of further disciplinary action, including dismissal.

30.9 On or about November 17, 2001 HOWELL issued PLAINTIFF a second warning that was a direct result of the first warning. In other words, the second warning was a direct result of DEFENDANTS HOWELL and NOBLES threats and harassment relating to the first warning. PLAINTIFF was treated unfairly when HOWELL issued

30.10 PLAINTIFF the first written warning, and PLAINTIFF was harassed and provoked only a few days after receiving it. The threats and intimidation from the DEFENDANTS forced me into making a choice that resulted in me getting written up the second time.

31. When HOWELL issue PLAINTIFF two written warnings threatening me with further action (termination) in less than two months after becoming a supervisor, it was easy for PLAINTIFF to believe that HOWELL, NOBLES and BOLTON and other unknown conspirators had plotted to have PLAINTIFF fired, especially when one consider that other operators had done the very same things a few days later and nothing was done to them and I was written up and almost terminated.

31.1 The thoughts of being terminated caused PLAINTIFF a tremendous amount of stress worrying about how PLAINTIFF would be able to provide for myself and my family. PLAINTIFF knew how devious HOWELL and NOBLES are after working with them for 18 years. I knew that both of them hated me enough to have me fired if they could find a way.

31.2 When you consider the fact that PLAINTIFF was only following the established patterns and practices enjoyed by all operators, including HOWELL, when PLAINTIFF was issued the first written warning it can be clearly seen that HOWELL was planning to get PLAINTIFF fired. PLAINTIFF was denied the same rights and privileges that all other operators were allowed to enjoy freely.

31.3 Although management is aware of the problems between HOWELL and PLAINTIFF, and although I have requested to go back to my original position at the Austin Building, management has taken no action to move PLAINTIFF from under the supervision of HOWELL.

31.4 When PLAINTIFF requested to be returned to PLAINTIFF old position at Austin because of the threats, intimidation, and harassment that PLAINTIFF was being put through by HOWELL, BOLTON told me that I would have to request a transfer, then he would see what his options were at that time as to where he would place me.

31.4 PLAINTIFF sent BOLTON a letter stating clearly that BOLTON did not have the authority to give PLAINTIFF position to anyone and that he was wrong. PLAINTIFF refused to ask for a transfer because PLAINTIFF never asked to be moved in the first place. All other employees were given the opportunity to volunteer temporarily to work at GE99.

31.5 Since PLAINTIFF didn't know that he had been transferred, PLAINTIFF sent BOLTON a letter asking for the particulars (date, reason, etc.) of PLAINTIFF's transfer. I needed to know since I had never signed any papers requesting a transfer. To date BOLTON has not responded to PLAINTIFF request for that information.

31.6 To date PLAINTIFF is being monitored endlessly by HOWELL, for most, if not all of an entire eight hour shift, obviously taking notes of PLAINTIFF actions. HOWELL desk is only a few feet from PLAINTIFF work area, and in a position where HOWELL can see ever move PLAINTIFF makes.

31.7 HOWELL constant peeping at PLAINTIFF is bad enough, but it is really nerve racking when every time I look up, I have to look at HOWELL doing absolutely nothing but chatting with his friends and watching PLAINTIFF. It is very stressful to think that he is trying to find things that he can note about me to turn over to Human Resources when I am doing the work that both of us should be doing. When things get really busy, Howell won't even answer the door to help the users.

31.8 HOWELL said that Noble told him that he didn't have to work and that he should watch me and take notes on me. It really isn't a problem when my co-worker (Barbara) is working, but when I have to do it all, it is unfair and much to stressful. It seems that all HOWELL is really capable of doing is manipulating things to make my job harder. The way HOWELL, BOLTON and NOBLES seem to see things is that as long as PLAINTIFF is doing all the work, they don't care if any other operator do anything or not.

31.9 It is as if HOWELL is being paid a tremendous amount of money just to watch PLAINTIFF and to document every little thing that PLAINTIFF do daily to make a case against me. . I feel that I have no help and management is allowing HOWELL to set me up for further disciplinary action in the very near future.

32. Every since PLAINTIFF has been supervised by Noble and HOWELL, PLAINTIFF shift has always been over burdened with work . Instead of the work being evenly split over all the shifts, wherein all operators would be treated equally, NOBLES and HOWELL manipulated most of the work to first shift.

32.1 On days that a good manager or supervisor would have extra bodies, if possible, on his shift because the work load was extremely heavy and stressful, Noble and HOWELL would tell some of the other operators not to do any work and let PLAINTIFF do it all. Then neither of them would help do the work themselves.

32.2 This created a very hostile working environment for PLAINTIFF , because many of the other operators feared Noble and HOWELL so much that they participated in the DEFENDANTS little schemes. These types of actions breeds a hostile environment and because of all the unnecessary work being forced on PLAINTIFF, PLAINTIFF became an injured party.

32.3 Just the thought of having to return to work under these hostile conditions is extremely stressful,

causing PLAINTIFF blood pressure and pulse rate to raise for beyond there normal rates but I need my job therefore I have to put up with it as long as I can.

32.4 It would take about twice as many pages in this complaint if PLAINTIFF was to tell all the things that was done to PLAINTIFF by DEFENDANTS BOLTON, NOBLES and HOWELL. PLAINTIFF is really embarrassed to file this complaint, but something has to be done to bring an end to the harassment, intimidations and threats that PLAINTIFF and other operator has to endure daily.

32.5 The threats, harassment and intimidation are so bad, specifically against me, that many of the other operators has often asked PLAINTIFF, how have you been able to put up with this type of harassment all these years. I can only say quietly within that it was only by the grace of God.

32.6 PLAINTIFF knows that PLAINTIFF has no other alternative but to file this lawsuit (other than quitting) to get treated equally or to even do the job that PLAINTIFF is assigned to do without being harassed, intimidated, threatened and being over burdened with work by aforementioned DEFENDANTS, and other unknown co-conspiracies for it is clear that no one is going to do anything about it.

32.7 As a way of ending this statement of fact, PLAINTIFF want to point out one more incident to help further my reasoning to believe that I have been willingly and intentionally conspire against in ITCS/CIS.

32.8 On or around March of 2000, PLAINTIFF was nominated for the 2000 Chancellor's Synergy Award. This was while PLAINTIFF was helping the ITCS/CIS improve GE99 site. No director, manager or supervisor thought enough of PLAINTIFF good work to even tell me about my nomination. I found the card in my Austin locker (DEFENDANT didn't even send it to GE99) about a year after the ceremony.

32.9 Strangely, most if not all, of the employees in ITCS/CIS was nominated for that same award, which I believe is the first time in the history of the university that a whole department was nominated for that award. This clearly made my nomination really worthless, even if I had been able to be at the ceremony.

33. The DEFENDANTS really have PLAINTIFF back against the wall, therefore I have no other choice but to defend myself, and I will do that to the best of all my abilities and with the help of my God that I truly serve.

33.1 PLAINTIFF is not going to quit, because this is what the DEFENDANTS want PLAINTIFF to do. Instead I decided to allow the federal court of the United States to handle it.

34. DEFENDANT's actions, herein, were committed with the intent to violate the PLAINTIFF rights.

35. All DEFENDANTS and higher ranking officials knew or should have known that the actions of their employees would violate clearly established law.

OPS North Carolina Office of State Personnel

April 16, 1991

Received
4/18/1991
Received
ECU
Personell

MEMORANDUM

To: All Agency and University Personnel Offices

From: Pam Bowling, Personnel Analyst PB
Position Management Division

Subject: Computer Operations/Data Processing Study

This is to update you on the status of the study and to inform you of our study plans from this point. To date, we have started the interviewing process for the agencies in Phrase 1 and 2. However, circumstances are causing us to delay this process until early fall. At that time we will resume full force on the study by completing the interview phrase and proceeding into analysis quickly after that. We expect to have tentative concepts and conclusions by early 1992. Therefore, due to time frames by the State Personnel Commission, implementation will not occur until Spring of 1992.

If you have any questions concerning this matter, please feel free to contact me at 733-3182.

OW

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EAST CAROLINA UNIVERSITY

GREENVILLE, NORTH CAROLINA 27858-4353

OFFICE OF THE CHANCELLOR

March 8, 1988

I would like, by this letter, to respond to your concerns regarding hiring and promotion decisions in Computing and Information Systems. As you know, I was deeply concerned by the questions you raised and I have been eager to resolve the problem.

We have recently come through a difficult period in CIS. A number of personnel changes have been made and this is always quite disruptive. However, I am satisfied now that we are in a good position to move forward. I am confident that we will see great things from CIS in the near future!

Concerning specific personnel actions, I have reviewed each hiring or promotion decision which you brought to my attention. There does not appear to be a pattern of racial discrimination. However, I intend to look beyond a review of past decisions. Let me give you my personal assurance that, consistent with the Affirmative Action Policy to which I and my staff are strongly committed, we will give utmost consideration to the applications of black employees in CIS. Black applicants will be seriously considered for each vacancy for which they are qualified.

Do not hesitate to call Mr. Dick Farris or Dr. Mary Ann Rose in the future if you have concerns or questions. I thank you for your patience in this matter and for the trust you have placed in me.

Sincerely,

Richard R. Eakin
Chancellor

RRE/ra

cc: Vice Chancellor C.G. Moore
Mr. Richard Farris
Dr. Mary Ann Rose

App. 45

Civil Action No. 1:93CV122-D-D

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI, EASTERN DIVISION

823 F. Supp. 1321; 1993 U.S. Dist. LEXIS 8318

June 11, 1993, Decided

In the motion presently before the court, the defendants charge that there is no genuine issue of material fact as to whether the plaintiff's statements to the press were a "substantial" or "motivating" factor behind the decision of the defendants to place him on administrative leave. Since the plaintiff cannot establish this fact, they continue, the defendants are entitled to qualified immunity. While certainly relevant to the core issue of the merits of the plaintiff's First Amendment claim, the undersigned fails to see how this particular argument has any bearing on the question of immunity. This court does believe, however, that it understands the source of this confusion. In its unpublished opinion, the Fifth Circuit found that genuine issues of material fact existed as to the "basis of the Board's decision," and appears to have found this issue material to the determination of qualified immunity. Maxey v. Smith, No. 94-60794, slip op. at 12 (5th Cir. Jun. 21, 1995). The Fifth Circuit went on to dismiss the defendants' appeal on qualified immunity [*5] because of relevant disputed factual issues. Baulch v. Johns, 70 F.3d 813, 815 (5th Cir. 1995) ("[A] district court's denial of a qualified immunity summary judgment is not appealable when there are disputed issues concerning the immunity claim.") (citing Johnson v.

Jones, 515 U.S. 304, 115 S. Ct. 2151, 2159, 132 L. Ed. 2d 238 (1995)).

The determination of qualified immunity is a three-pronged inquiry. The court must determine:

> 1) if the plaintiff has asserted the violation of a constitutional right at all;
>
> 2) if the law was clearly established at the time of the official's action; and
>
> 3)the objective reasonableness of the official's conduct as measured by reference to clearly established law.

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring

the degree of

Associate in Applied Science

Business Administration

together with all the rights, honors and privileges appertaining thereto

Given this month of May, nineteen hundred and eighty-ten

Clifton W. Everett Sr.
Chairman of the Board of Trustees

William E. Crawford Jr.
President of the College

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring

the degree of

Associate in Applied Science

Industrial Management Technology

together with all the rights, honors and privileges appertaining thereto

Given this month of March nineteen hundred and eighty-two

Clayton W. Everett Sr.
Chairman of the Board of Trustees

William E. Fulford Jr.
President of the College

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring, Jr.

the degree of

Associate in Applied Science

Electronic Data Processing: Business

together with all the rights, honors and privileges appertaining thereto

Given this month of May nineteen hundred and eighty-four

Clifton W. Everett Sr.
Chairman of the Board of Trustees

Charles E. Russell
President of the College